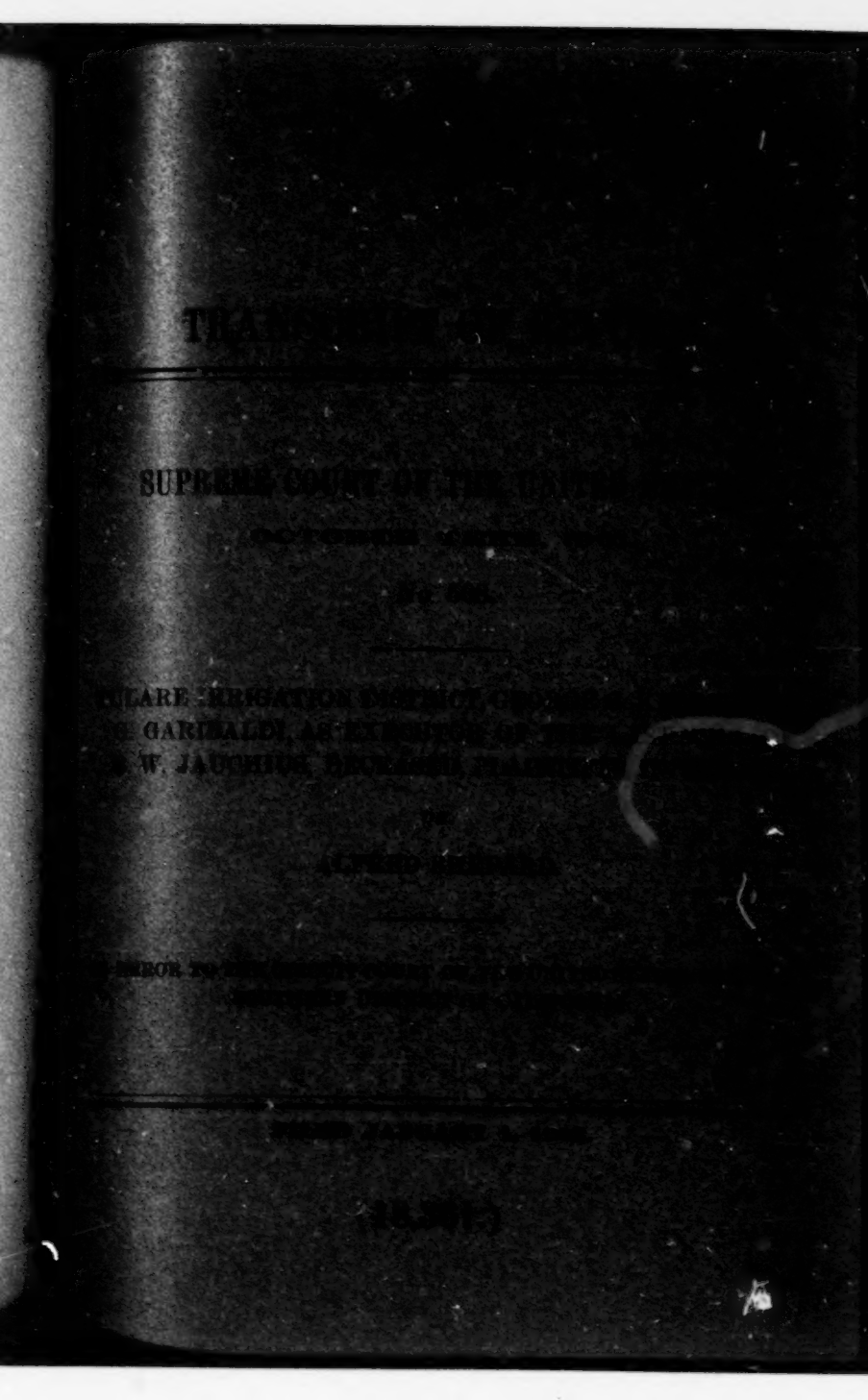

(18,361.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 508.

TULARE IRRIGATION DISTRICT, GEORGE G. KELLY, AND G. GARIBALDI, AS EXECUTOR OF THE LAST WILL OF B. W. JAUCHIUS, DECEASED, PLAINTIFFS IN ERROR,

vs.

ALFRED SHEPARD.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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a *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States, ninth circuit, southern district of California, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between Tulare Irrigation District, George G. Kelly and G. Garibaldi, executor of the last will of B. W. Jauchius, deceased, plaintiffs in error, and Alfred Shepard, defendant in error, a manifest error has happened to the great damage of the said Tulare Irrigation District, George G. Kelly and G. Garibaldi, executor of the last will of B. W. Jauchius, deceased, plaintiffs in error, as by their complaint appears. We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within sixty days from the date hereof in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may
b cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, the 23rd day of December, in the year of our Lord one thousand nine hundred and one.

[Seal U. S. Circuit Court, Southern Dist. Cal., 1886.]

WM. M. VAN DYKE,
Clerk of the Circuit Court of the United States, Ninth Circuit, Southern District of California,
By CHAS. N. WILLIAMS,
Deputy Clerk.

Allowed by—
OLIN WELLBORN, *Judge.*

c [Endorsed:] In the Supreme Court of the United States. Tulare Irrigation District, George G. Kelly and G. Garibaldi, plaintiffs in error, *vs.* Alfred Shepard, defendant in error. Writ of error. Filed Dec. 23 1901 Wm. M. Van Dyke clerk Chas. N. Williams deputy

I hereby certify that a copy of the within writ of error was on the 23rd day of December 1901, lodged in the clerk's office of the

said United States circuit court for the southern district of California, for the said defendants in error.

WM. M. VAN DYKE,
Clerk U. S. Circuit Court, Southern District of California,
By CHAS. N. WILLIAMS,
Deputy Clerk.

d UNITED STATES OF AMERICA, *ss:*

To Alfred Shepard, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington in the District of Columbia, on the tenth day of February, A. D. 1902, pursuant to a writ of error on file in the clerk's office of the circuit court of the United States of the ninth judicial circuit, in and for the southern district of California, in that certain action number 859, wherein Tulare Irrigation District, George G. Kelly and G. G. Garibaldi, as executor of the will of B. W. Jauchius, deceased, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 23rd day of December, in the year of our Lord one thousand nine hundred and one, and of the Independence of the United States the one hundred and twenty-sixth.

OLIN WELLBORN,
U. S. District Judge for the Southern District of California.

e [Endorsed:] In the Supreme Court of the United States. Tulare Irrigation District *et al.*, plaintiffs in error, *vs.* Alfred Shepard, defendant in error. Citation. Filed Dec. 26 1901 Wm. M. Van Dyke clerk Chas. N. Williams deputy

Service of the within citation and receipt of a copy thereof is admitted this 24th day of December, A. D. 1901.

S. F. LEIB,
Attorney for Alfred Shepard, Defendant in Error.

f The answer of the judges of the circuit court of the United States of America of the ninth judicial circuit in and for the southern district of California.

The record and all proceedings of the complaint whereof mention is within made, with all things touching the same, we certify under the seal of our said circuit court, to the Supreme Court of the United States, in a certain schedule to this writ annexed as within we are commanded.

By the court:

[Seal U. S. Circuit Court, Southern Dist. Cal., 1886.]

WM. M. VAN DYKE, *Clerk,*
By CHAS. N. WILLIAMS,
Deputy Clerk.

1 In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

ALFRED SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT, Defendant; GEORGE G. Kelly and B. W. Jauchias, Defendants and Intervenors. } No. 859.

2 In the Circuit Court of the United States, in the Ninth Circuit, in and for the Southern District of California.

ALFRED SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT, a Corporation, Defendant.

The plaintiff above named complains of the defendant above named, and for cause of action alleges:

That the plaintiff is, and for ten years and more last past, has been a citizen of and residing in the State of Michigan, in the United States of America, and at all such times has been and yet is a non-resident of the State of California, and has not at any time been a citizen of the State of California.

That the defendant, Tulare Irrigation District, is and at all times since the second day of September, 1889, has been a corporation, duly incorporated under the laws of the State of California, to wit, as an irrigation district under and pursuant to the provisions of an act of the legislature of the State of California, entitled, "An act to provide for the organization and government of irrigation districts, and to provide for the acquisition of water and other property and for the distribution of water thereby for irrigation purposes," approved March 7th, 1887.

That the said defendant ever since said second day of September, 1889, has been, and now is, acting as such corporation under such act of the legislature of said State, and under the acts of the legislature of said State amendatory thereof and supplemental thereto; with its principal place of business in the county of Tulare, State of California, and with the offices of said corporation in the said county of Tulare, State of California; and all the land embraced in the corporate limits of said corporation are and always have been within the said county of Tulare in said State.

3 That heretofore, to wit, in the month of May, 1890, the board of directors of said defendant, pursuant to the provisions of said acts of said legislature, estimated and determined the amount of money necessary to be raised for the purpose of constructing the necessary irrigation canals and works and acquiring the necessary water and property and rights therefor, and of otherwise carrying out the provisions of said acts, and estimated and determined the amount of money necessary to be raised therefor to be the sum of five hundred thousand dollars; and said board immediately called a special election of the electors of said district at

which should be submitted to such electors possessing the qualifications prescribed by said act whether or not the bonds of said district should be issued in the amount so determined of five hundred thousand dollars.

That notice of such election was given by posting in three public places in each election precinct of said district for at least twenty days, and also by publication of said notice in a newspaper published in said county and where the office of said board of directors of said district was required to be kept, to wit, in the said county of Tulare, once a week for three consecutive weeks, which notices so posted and published specified the time of holding of such election and the amount of bonds so proposed to be issued.

That at said election a majority of the votes cast were in favor of bonds being issued to the amount of five hundred thousand dollars, as aforesaid, said majority of votes being "Bonds—yes," there being 348 votes cast at said election for the issuance of said bonds and only 50 votes cast against the issuance of the same.

That thereupon the board of directors of said defendant caused the bonds of said defendant in the said amount of five hundred thousand dollars to be issued; that each of said bonds was for the principal sum of five hundred dollars, and the same were
4 numbered consecutively from 1 to 1000, inclusive, that all of said bonds with the exception of said numbers were of precisely like tenor and form, and were signed by the president and secretary of said defendant, and the seal of said board of directors was affixed to each of said bonds. A copy of one of said bonds, to wit, the one numbered 400, is hereto annexed, marked "Exhibit A," and made a part hereof.

That coupons for the payment of the interest payable on each of said bonds were attached thereto and were signed by the secretary of said defendant; that each coupon had on the upper right-hand corner thereof and on the back thereof the number of the instalment of interest for which said coupon was given, and had on the lower left-hand corner thereof the number of the bond to which it was attached; that the coupons of each of said bonds were precisely of the same tenor and form of the coupons of each of the other of said bonds, save as to the number placed thereon of the bond to which they were attached, and each of said coupons on each bond was precisely of the same tenor and form of each of the other coupons for interest on such bonds, save as to the amount of interest for which it was given, and save as to the said numbers placed thereon to show the instalment of interest for which said coupon was given. That a copy of one of said coupons, to wit, the one attached to bond numbered 400, given for the twelfth instalment of interest, is hereto attached, marked "Exhibit B," and made a part hereof.

That thereafter a portion of said bonds were by said defendant and its board of directors sold, issued and delivered for at least ninety per cent. of their par value, and the proceeds thereof used for the construction of canals and irrigation works for said district, and the remaining part of said bonds were exchanged issued and delivered by said defendant and its board of directors at their par

value for the conveyances to said district of water, water rights, and other property for irrigation purposes, and said district has thereby been enabled to and has irrigated the lands in such district;
5 but plaintiff has no knowledge and is unable to state which of said bonds were thus sold and which of them were thus exchanged.

That the parties who received the bonds and coupons hereinafter specifically numbered upon such sale or exchange by said district, sold, transferred and delivered the same to innocent and *bona fide* purchasers for the full value thereof, and such purchasers last aforesaid so purchased said bonds and coupons, and so took and received the same for the full value thereof, then paid by them therefor in the usual course of business, and before any of the same were due or dishonored, and in good faith and without any notice of any defect or invalidity of the same or of any of them, or of the title to them or any of them of the party or parties from whom they so received the same.

That said bonds so referred to are numbered as follows, namely: 301 to 315, inclusive; 342 to 356, inclusive; 389 to 396, inclusive; 398 to 418 inclusive; 427 to 430, inclusive; 432 to 452, inclusive, 455 to 468 inclusive; 476; 478; 490; 491; 492; 548; 562; 578; 579; 583; 588 to 603, inclusive; 607; 608; 616; 625 to 628 inclusive; 634 to 639, inclusive; 719 to 725, inclusive; 728; 734; 735; 746 to 749, inclusive; 759 to 916, inclusive; 934 to 943, inclusive; 948 to 952, inclusive; 959; 961; 962; and 978 to 1000, inclusive.

That said defendant paid regularly and as they fell due the first eleven instalments of interest on said bonds represented by the said coupons attached to said bonds represented by instalment numbers on said coupons of 1 to 11, inclusive; but has not paid any part of any of the following coupons for interest on said specifically named bonds, namely: the coupons with the instalment numbers 12, 13, 14, 15 and 16 thereon for interest payable respectively July 1, 1896; January 1, 1897; July 1, 1897; January 1, 1898; July 1, 1898, attached to said bonds numbered 301 to 315, inclusive; 389 to 396, inclusive; 427 to 430, inclusive; 433 to 438, inclusive; 562; 578; 579; 583; 588 to 603, inclusive;
6 607; 608; 616; 625 to 628, inclusive; 634 to 639, inclusive; 719 to 725, inclusive; 728; 746 to 749, inclusive; 814 to 840, inclusive; 924 to 941, inclusive; 961; 962; 989 to 1000, inclusive: the coupons with the instalment numbers 13, 14, 15, and 16 thereon for interest payable respectively January 1, 1897; July 1, 1897; January 1, 1898 and July 1, 1898, attached to said bonds numbered 982 to 988, inclusive: the coupons with the instalments numbered 12 thereon for interest payable July 1, 1896 attached to said bonds numbered 398 to 418 inclusive; 439 to 452, inclusive; 455 to 468 inclusive; 759 to 766 inclusive; 768, to 785, inclusive; 787 to 800, inclusive; 802; 807 to 813, inclusive; 846; 858; 902; 913; 915; 942; 943; 948 to 952, inclusive; 959; 978 to 981, inclusive: the coupons with the instalment number 13 thereon for interest payable January 1, 1897, attached to said bonds numbered 432; 548; 734; 735; 767; 786; 801; 803 to 806, inclusive; 841 to

845, inclusive; 847 to 857, inclusive; 859 to 901, inclusive; 903 to 912, inclusive; 914; 916; and the coupons with the instalment number 16 thereon for interest payable July 1, 1898, attached to said bonds numbered 342 to 356, inclusive; 476; 478; 490; 491 and 492; that all of said unpaid coupons were transferred and delivered to this plaintiff previous to October 1, 1898, and said plaintiff has ever since been the absolute owner holder and bearer thereof; that said plaintiff bought a part of said unpaid coupons before their maturity in good faith and in the usual course of business, and then paid therefor their full value and without any notice of any defects or invalidity of the same or any of them, or the title to them or any of them by the party from whom he so purchased them; and the remainder of said unpaid coupons were transferred to said plaintiff as aforesaid by parties who had all purchased the same before their maturity in good faith in the usual course of business, and paid therefor their full value and without any notice of any defect
7 or invalidity of the same or any of them, or the title to them or any of them of the party or parties from whom they so purchased them. That such coupons so bought by the plaintiff before their maturity *and* are those attached to said bonds numbered 625, 626, 823, 824, 825, 826, 827, 828, 829, 830, 831, 313, 389, 390, 391, 392, 393, 394, 395, 396, 634, 635, 636, 427, 428, 429, 430, 720, 725, 728, 746, 747, 748, 749, 934, 935, 936, 937, 721.

That before the commencement of this action and on October 9, 1898, the plaintiff presented to the defendant and defendant's treasurer at the office of said treasurer in the town of Tulare, in said county of Tulare, State of California, all of said unpaid coupons, and demanded from said defendant and its said treasurer payment of said coupons and offered to surrender said coupons on their payment, but said defendant and its said treasurer failed and refused to pay said coupons or any of them or any part thereof.

Wherefore, plaintiff prays judgment against said defendant for the sum of $13185.00, with interest at the rate of six per cent. per annum on $3600.00 thereof from the first of July, 1896, until paid; on $3255.00 thereof from January 1, 1897, until paid; on $2010.00 thereof from July 1, 1897, until paid; on $2010.00 thereof from January 1, 1898, until paid; and on $2310.00 thereof from July 1, 1898, until paid, all in United States gold coin, and for all costs of suit.

S. F. LEIB,
Attorney for Plaintiff.

8 EXHIBIT A.

Bond No. 400.

STATE OF CALIFORNIA, UNITED STATES OF AMERICA.

Tulare Irrigation District Bond.

TULARE COUNTY, *State of California.*

Tulare Irrigation District, a public corporation, organized and existing under and in pursuance of the laws of the State of California, for value received, promises to pay to the bearer hereof, at the office of the treasurer of said district, the sum of five hundred dollars, in gold coin of the United States, in installments as follows, to wit: At the expiration of eleven years, five per cent. of said sum; at the expiration of twelve years, six per cent. of said sum; at the expiration of thirteen years, seven per cent. of said sum; at the expiration of fourteen years, eight per cent. of said sum; at the expiration of fifteen years, nine per cent. of said sum; at the expiration of sixteen years, ten per cent. of said sum; at the expiration of seventeen years, eleven per cent. of said sum; at the expiration of eighteen years thirteen per cent. of said sum; at the expiration of nineteen years fifteen per cent. of said sum; and at the expiration of the twentieth year, sixteen per cent. of said sum. Said installments are to be paid as provided in, and only on presentation and surrender of the respective installment coupons hereunto attached.

Said district further promises to pay interest on said sum at the rate of six per cent. per annum, payable semi-annually, on the first day of January and July of each year, in gold coin of the United States, on presentation and surrender at the office of the treasurer of said district, of the respective interest coupons hereunto attached.

This bond is one of a series of bonds, amounting in the
9 aggregate to five hundred thousand dollars caused to be issued by the board of directors of said Tulare Irrigation District, by authority of and pursuant to the provisions of an act of the legislature of the State of California, entitled, "An act to provide for the organization and government of irrigation districts, and to provide for the acquisition of water and other property and for the distribution of water thereby for irrigation purposes," approved March 7th, 1887, and also by authority of and in accordance with the vote of the qualified electors of said irrigation district, at a special election held on the 7th day of June, 1890.

The principal and interest of said bonds are to be paid out of the proceeds of annual assessments to be levied upon the lands of the district amounting to 36,719 acres, including the city of Tulare, of the present assessed value of $1,468,153.

In witness whereof this bond has been signed by the president and secretary of the board of directors of said Tulare Irrigation

District, and the seal of said board has been affixed hereto, this first day of July, in the year one thousand eight hundred and ninety.

E. OAKFORD,
Secretary of said Board.

J. W. MACKIE,
President of said Board.

[Seal of said Board.]

10 EXHIBIT B.

Interest Coupon.

$15.00. No. 12.

Tulare Irrigation District will pay to bearer at the office of the treasurer of said district at Tulare, Tulare county, State of California, U. S. A., on July 1st, 1896, the sum of fifteen dollars in gold coin of the United States being semi-annual interest on bond No. 400.

Dated July 1st, 1890.

E. OAKFORD, *Secretary.*

STATE OF SOUTH DAKOTA, } ss:
County of Douglass, }

Alfred Shepard, being first duly sworn, on his oath states that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

ALFRED SHEPARD.

Subscribed and sworn to before me this 10th day of November, 1898.

C. E. FLOETE,
Notary Public in and for the County of Douglass, State of South Dakota.

[SEAL.]

(10c. int. rev. st'p, cancelled.)

11 (Endorsed:) No. 859. U. S. circuit court, ninth circuit, southern district of California. Alfred Shepard, pl'ff, *vs.* Tulare Irrigation District, a corporation, def't. Complaint. Filed Nov. 16 1898 Wm. M. Van Dyke, clerk S. F. Leib, San Jose, California, attorney for plaintiff.

12 UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Circuit, Southern District of California.

ALFRED SHEPARD, Plaintiff, vs. TULARE IRRIGATION DISTRICT, a Corporation, Defendant.	Action brought in the said circuit court, and the complaint filed in the office of the clerk of said circuit court, in the city of Los Angeles, county of Los Angeles.

The President of the United States of America to Tulare Irrigation District, a corporation, Greeting:

You are hereby required to appear in an action brought against you by the above-named plaintiff, in the circuit court of the United States, ninth circuit, in and for the southern district of California, and to file your plea, answer or demurrer, to the complaint, filed therein (a certified copy of which accompanies this summons), in the office of the clerk of said court, in the city of Los Angeles, county of Los Angeles, within twenty days after the service on you of this summons, or judgment by default will be taken against you.

The said action is brought to recover judgment against said defendant for the sum of $13,185.00 in which amount plaintiff alleges defendant is indebted to said plaintiff, for the interest on certain bonds duly and lawfully issued by defendant and represented by coupons attached to said bonds, which said coupons plaintiff and his assignors bought before their maturity in good faith in the usual course of business and paid therefor their full value and without any notice of any defect or invalidity of the same or any of them or the title to them or any of them, of the party or parties from whom they so purchased them, and plaintiff further alleges that before the commencement of this action and on October 9, 1898, the plaintiff presented to the defendant and defendant's treasurer at the office of said treasurer in the town of Tulare, in said county of Tulare, State of California, all of said unpaid coupons, and demanded from
13 said defendant and its said treasurer payment of said coupons and offered to surrender said coupons on their payment, but said defendant and its said treasurer failed and refused to pay said coupons or any of them or any part thereof.

Plaintiff further prays judgment for interest at the rate of six per cent. per annum on $3600.00 thereof from the first of July, 1896, until paid; on $3255.00 thereof from January 1, 1897, until paid; on $2010.00 thereof from July 1, 1897, until paid; on $2010.00 thereof from January 1, 1898, until paid; and on $2310.00 thereof from July 1, 1898, until paid, all in United States gold coin, and for all costs of suit.

All of which more fully appears from the complaint on file in this cause to which you are hereby expressly referred, and if you fail to appear and plead, answer or demur, as herein required, your default will be entered and the plaintiff will take judgment for the sum demanded in the complaint, viz: $13,185.00 with interest and costs as aforesaid.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this twenty-fifth day of November, in the year of our Lord one thousand eight hundred and ninety-eight, and of our Independence the one hundred and twenty-third.

[SEAL.] WM. M. VAN DYKE, *Clerk.*

UNITED STATES MARSHAL'S OFFICE,
SOUTHERN DISTRICT OF CALIFORNIA.

I hereby certify, that I received the within writ on the 29th day of November, 1898, and personally served the same on the 30th day of November, 1898, by delivering to and leaving with George Q. Gill, the president of the board of directors of The Tulare Irrigation District (a corporation) said defendant named therein, personally, at the county of Tulare (at Tulare city) in said district, a certified copy thereof, together with a copy of the complaint, certified to by Wm. M. Van Dyke, clerk of the U. S. circuit court at Los Angeles, Cal. attached thereto.

H. Z. OSBORNE,
U. S. Marshal,
By E. J. BOUST, *Deputy.*

Fresno, Cal. Nov. 30, 1898.

(Endorsed:) Original. No. 859. U. S. circuit court, ninth circuit, southern district of California. Alfred Shepard *vs.* Tulare Irrigation District, a corporation. Summons. S. F. Leib, Esq., plaintiff's attorney, Filed Dec. 2 1898 Wm. M. Van Dyke clerk.

In the Circuit Court of the United States, Ninth Circuit, in and for the Southern District of California.

ALFRED SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT (a Corporation), Defendant.

Comes now The Tulare Irrigation District, the defendant above named and demurs to the complaint of the plantiff on file herein on the grounds:

I.

Because said complaint does not state facts sufficient to constitute a cause of action against said defendant.

II.

Because said complaint is uncertain in the following particulars:

(*a.*) That it cannot be ascertained from said complaint what notice was given of the election mentioned therein, nor can it be ascertained what was posted by which any notice of such election was given.

(*b.*) That it cannot be ascertained therefrom which of the bonds mentioned in said complaint were sold and delivered for ninety per

cent. of their par value and which of the said bonds were exchanged and delivered for water, water rights, and other property; nor to whom said bonds or any of them were by said defendant sold and exchanged as alleged in said complaint.

(c.) That it cannot be determined therefrom who the innocent and *bona fide* purchasers of said bonds and coupons in said complaint mentioned, are, nor from whom such innocent purchasers obtained the same; nor can it be determined therefrom from whom plaintiff obtained the bonds and coupons mentioned in said complaint.

(d.) That it cannot be determined therefrom the names of the parties who transferred to plaintiff the unpaid coupons men-
16 tioned in said complaint which were transferred to him after their maturity.

(e.) That it cannot be determined therefrom in what manner or by what proceedings the board of directors of defendant sold the bonds alleged in said complaint to have been sold at ninety per cent. of their par value.

III.

That said complaint is ambiguous upon all the grounds and for the reasons stated in paragraph numbered "II" hereof.

IV.

That said complaint is unintelligible for the reasons and upon all the grounds set forth in said paragraph "II" hereof.

Wherefore defendant prays judgment that it be not required to further answer herein and that it be dismissed hence with its costs.

E. W. HOLLAND,
C. L. RUSSELL,
G. W. ZARTMAN,
Attorneys for Defendant.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

E. W. HOLLAND,
C. L. RUSSELL,
G. W. ZARTMAN,
Attorney- for Tulare Irrigation District,
Defendant Above Named.

17 STATE OF CALIFORNIA, } ss:
County of Tulare, }

E. W. Holland, being duly sworn, deposes and says he is an attorney-at-law, and resides at and has his office at the city of Tulare, in the county of Tulare, State of California, and is one of the attorneys of record for the defendant in the within-entitled cause; that S. F. Leib is the *the* attorney of record for the plaintiff in said cause and has his office at Farmers' Union building, city of San Jose, State of California. That at each of said places there is a

United States post-office, and between said places there is a regular daily communication by mail. That on the 5th day of January, 1899, affiant served a copy of the annexed demurrer upon said attorney for the plaintiff by depositing the same enclosed in a sealed envelope in the United States post-office at said city of Tulare, with the postage prepaid thereon, directed to S. F. Leib, attorney-at-law, Farmers' Union building, San Jose, California.

E. W. HOLLAND.

Subscribed and sworn to before me, this 5th day of January —

[SEAL.] C. L. RUSSELL,
Notary Public in and for the County of Tulare, State of California.

(10c. int. rev. st'p, cancelled.)

(Endorsed:) No. 859. In the United States circuit court, ninth circuit, southern district of California. Alfred Shepard, plaintiff, *vs.* Tulare Irrigation District, defendant. Demurrer. Filed Jan. 9, 1899. Wm. M. Van Dyke, clerk. Calvin L. Russell, Tulare, Cal., attorney for defendant.

18 At a stated term, to wit, the January term, A. D., 1899, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, held at the court-room in the city of Los Angeles on Monday the twenty-fourth day of April, in the year of our Lord one thousand eight hundred and ninety-nine:

Present: The Honorable Olin Wellborn, district judge.

ALFRED SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT, a Corporation, Defendant. } No. 859.

In this cause the demurrer to the complaint having been heretofore submitted to the court for its consideration and decision, the court now renders its written opinion, and it is ordered that said demurrer be overruled.

I, Wm. M. Van Dyke, clerk of the circuit court of the United States, for the southern district of California, do hereby certify the foregoing to be a full, true and correct copy of an original order made and entered by said court April 24th, 1899, in the cause entitled Alfred Shepard, plaintiff, *vs.* Tulare Irrigation District, a corporation, defendant, No. 859, and remaining of record therein.

Attest my hand and the seal of said circuit court this 30th day of March, A. D., 1901.

[SEAL.] WM. M. VAN DYKE, *Clerk.*

19 (Endorsed:) No. 859. U. S. circuit court, ninth circuit, southern district of California. Alfred Shepard, *vs.* Tulare Irrigation District. Certified copy of order overruling demurrer. Filed Mar. 30 1901 Wm. M. Van Dyke, clerk.

20 STATE OF CALIFORNIA, } ss:
County of Tulare, }

C. L. Russell, being duly sworn, deposes and says that he is an attorney-at-law, and resides at and has his office at the city of Tulare, in the county of Tulare, State of California, and is one of the attorney- of record for the defendant in the within-entitled cause; that S. F. Leib, Esq., is the attorney of record for plaintiff in said cause and has his office at city of San Jose, State of California. That at each of said places there is a United States post-office, and between said places there is a regular daily communication by mail. That on the 29th day of May, 1899, affiant served a copy of the annexed answer upon said attorney for plaintiff by depositing the same enclosed in a sealed envelope in the United States post-office at said city of Tulare, with the postage prepaid thereon, directed to S. F. Leib, Esq., attorney-at-law, San Jose, California.

C. L. RUSSELL.

Subscribed and sworn to before me, this 29th day of May, 1899.

E. W. HOLLAND,
Notary Public in and for the County of Tulare, State of California.

[SEAL.]

(10c. int. rev. st'p, cancelled.)

21 In the Circuit Court of the United States, Ninth Circuit, in and for the Southern District of California.

ALFRED SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT, Defendant.

Comes now the defendant in the above-entitled action, and for answer to the plaintiff's complaint in said action:

I.

Alleges that said defendant has not sufficient knowledge, information or belief to enable it to answer the first paragraph of said complaint, and on that ground, denies that plaintiff is or at any time in said complaint mentioned was or has been a citizen of, or residing in, the State of Michigan, in the United States of America, or at all or any such times has been or that he is yet a non-resident of the State of California, or that he has not at any or all times been a citizen of the State of California.

II.

Denies that defendant is or at any time mentioned in said complaint was or ever has been an irrigation district duly or otherwise incorporated under the laws of the State of California as an irrigation district under and pursuant to, or under or pursuant to, the provisions of an act of the legislature mentioned in said complaint, or any other act of the legislature of the State of California.

III.

Denies that defendant ever since the 2nd day of July, 1889 or any other time, has been, or that it now is acting as such, or any corporation, under such or any act of the legislature of said or any State; or under the acts of the legislature of said or
22 any State amendatory thereof or otherwise or supplemental thereto, or otherwise or at all, with its principal or any place of business in the county of Tulare, State of California, or elsewhere, or with the office of said or any corporation in said county of Tulare, except as hereinafter stated; denies that all the lands embraced in the corporate or any limits of said corporation are or at any time have been within said county of Tulare, in the State of California, except as hereinafter set forth.

IV.

Denies that in the month of May, 1890 or at any other time, the board of directors of defendant, pursuant to the provisions of said or any acts of said legislature or otherwise or at all, estimated and determined, or estimated or determined, the amount of money necessary to be raised for the purpose of constructing the necessary or any irrigation canals and works, or canals or works, or acquiring the necessary or any water and property and rights, or water or property or rights, therefor, or of otherwise or at all carrying out the provisions of said or any acts or estimated and determined, or estimated or determined, the amount of money necessary to be raised therefor or otherwise or at all to be the sum of $500,000 or any other sum; and denies that said board, immediately or otherwise, called a special or any election of the electors of said district at which should be submitted to such or any electors possessing the qualifications prescribed by said or any act or at all whether or not the bonds of said district should be issued in the amount so or otherwise determined of $500,000 or any other sum, except as hereinafter set forth.

V.

Denies that notice of such or any election was given by posting in three or any other number of public places in each or any election precinct of said district, for twenty or any other number of days; or by publication of said or any notice in any newspaper published in said county, or elsewhere, or where the *the* office
23 of said board of directors of said district was required to be kept in the county of Tulare or elsewhere, once a week for three or any number of successive weeks or at all, which notices, so posted and published, or so posted or published, specified the time of holding of such or any election, and the amount of bonds so or otherwise or at all proposed to be issued, except as hereinafter set forth.

VI.

Denies that at said election a majority or any other number of the votes cast were in favor of bonds being issued to the amount of

$500,000 or in any other amount or at all, except as hereinafter stated.

VII.

Denies that thereupon or at any other time or at all, the board of directors of said defendant caused the bonds of said defendant in the amount of $500,000 or any other sum, or at all to be issued, except as hereinafter stated; denies that each of said or any bonds was for the principal sum of five hundred dollars or any other number of dollars, or that the same were numbered consecutively or otherwise or at all, from one to one thousand inclusive, or otherwise or at all, except as hereinafter stated; denies that all or any of said bonds, with the exception of said numbers, were all of precisely like tenor and form, or were at all of like tenor and form, or of like tenor or form, or were signed by the president and secretary, or by the president or secretary of said defendant, or that the seal of said board of directors was affixed to each or any of said bonds, except as hereinafter set forth.

VIII.

Denies that coupons for the payment of the interest payable on each or any of said bonds were attached thereto, or were signed by the secretary of defendant, except as hereinafter stated.

24 IX.

Denies that thereafter or at any other time, any part of said or any bonds were by the defendant or its board of directors sold, issued and delivered, or sold, issued or delivered, for ninety per cent. or any per cent. of their par value, or that the proceeds thereof were used for the construction of canals and irrigation works, or for the construction of canals or irrigation works for defendant; and denies that the remaining or any part of said or any bonds were exchanged, issued and delivered, or exchanged, issued or delivered, by the defendant or its board of directors at their par value, for the conveyance to said district of water, water rights and other property for irrigation purposes, or for the conveyance of water, water rights or other property for irrigation purposes; and denies that defendant has thereby or otherwise been enabled to or has irrigated the lands of said district.

X.

Alleges that it has no information, knowledge or belief as to the matters alleged in the second paragraph of page "4" of plaintiff's complaint, and upon that ground, denies that the parties who received the bonds and coupons or the bonds or coupons in said complaint specifically numbered, upon such or any sale or exchange, by said district, sold, transferred and delivered, or sold or transferred or delivered said bonds and coupons, or said bonds or coupons to innocent or *bona fide* purchasers for the full value thereof or for any value; and denies that such or any purchasers last aforesaid or otherwise, so or otherwise or at all, purchased said bonds and coupons, or said bonds or coupons, or so or otherwise or at all took or

received the same for the full or any value thereof, then or at any other time or at all paid by them therefor in the usual or any course of business or at all, before any or all of them were due or dishonored, or in good faith or without full notice of all defects and invalidity of the same and of all of them, and of the title to them and all of them of the party and parties from whom they so received the same.

XI.

Denies that the defendant paid regularly or otherwise or at all, as they fell due or at any other time the first eleven or any other number of instalments of interest in said bonds represented by said coupons mentioned in said complaint or otherwise or at all, except as hereinafter set forth.

XII.

Alleges that defendant has no knowledge, information or belief as to the matters stated in the first paragraph on page "6" of plaintiff's complaint, and upon that ground defendant denies that all of said or any unpaid coupons mentioned upon pages "5" and "6" of said complaint were transferred or delivered to plaintiff previous to October 1st, 1896, or that plaintiff has ever since been absolute or any other owner, holder and bearer thereof, or the owner or holder or bearer thereof, at all, or that plaintiff bought a part of said unpaid coupons before their *majority* in good faith*b* or otherwise or at all or in the usual course of business or otherwise or at all, or paid therefor their full or any value without full notice of all defects and invalidity of the same and all of them, and the title to them and all of them, by the party and parties from whom he purchased them; and on the same ground denies that the remainder of said unpaid coupons were transferred to plaintiff as aforesaid or otherwise or at all by parties who had purchased the same or any of them before their maturity in good faith or otherwise or at all, in the usual or any other course of business or at all, or paid therefor their full value without full notice of all defects and invalidity of the same and of all of them, and the title to them and all of the-, of the party and parties from whom they so purchased them; and upon such grounds denies that said coupons bought by the plaintiff before their maturity or otherwise or at all are those attached to the bonds numbered in said paragraph on page "6" of said complaint.

And for a further answer and defense to said complaint defendant alleges:

I.

That on or about the first day of July, 1889, a certain simulated and pretended petition was pretended and attempted to be presented to the board of supervisors of the county of Tulare, State of California, at a regular meeting of said board which said simulated and pretended petition was in the words and figures following, to wit:

"*Petition.*

"To the honorable the board of supervisors of the county of Tulare, State of California:

"The undersigned, your petitioners herein, respectfully represent to your honorable body that we are freeholders owning land within the following-described district, all of which is situated within Tulare county; that we desire to provide for the irrigation of the same; that all of said proposed district as hereinafter described, is susceptible of one mode of irrigation from a common source and by the same system of works; that is to say, by conveying the waters of Kaweah river by means of dams thereon and by main and distributing canals therefrom.

"We therefore petition your honorable body and pray that said hereinafter-described district be organized an irrigation district under an act of the legislature of the State of California, entitled, "An act to provide for the organization and government of irrigation districts and to provide for the acquisition of water and other property and for the distribution of water thereby for irrigation purposes," approved March 7, 1887.

"The boundaries of said proposed district are as follows:

"Commencing at the northeast corner of section twelve (12) in township nineteen (19) S, range twenty-four (24) E; thence south one (1) mile to the northeast corner of section thirteen (13), township nineteen (19) S, range twenty-four (24) E; from
27 thence east two (2) miles to the northeast corner of section seventeen (17), township nineteen S, range twenty-five (25) E; from thence south three (3) miles to the southeast corner of section twenty-nine (29), township nineteen (19) S, range twenty-five (25) E; from thence west one (1) mile to the southwest corner of section twenty-nine (29) last aforesaid; from thence south four (4) miles to the northwest corner of section twenty (20) township twenty (20) S, range twenty-five (25) E; from thence east one (1) mile to the northeast corner of said section twenty (20) last aforesaid; from thence south three (3) miles to the southeast corner of section thirty-two (32), township twenty (20) S, range twenty-five (25) E; from thence west to the northeast corner of section five (5), township twenty-one (21) S, range twenty-five (25) E; from thence south two (2) miles to the southeast corner of section eight (8), township twenty-one (21) S, range twenty-five (25) E; from thence west ten miles (10) to the southwest corner of section eleven (11), township twenty-one (21) S. range twenty-three (23) E; from thence north two (2) miles to the northwest corner of section two (2), township twenty-one (21), S, range twenty-three (23) E; from thence east to the southwest corner of section thirty-one (31), township twenty (20) S, range twenty-four (24) E; from thence north one and one-half (1½) miles to the southeast corner of the northeast quarter (¼) of section twenty-five (25), township twenty (20) S, range twenty-three (23) E; from thence west to the southwest corner of the northwest quarter (¼) of said section twenty-five (25) last aforesaid; from

thence south one-half (½) mile to the southeast corner of section twenty-six (26), township twenty (20) S, range twenty-three E; from thence west one (1) mile to the southwest corner of said section twenty-six (26) last aforesaid; from t-ence north two (2) miles to the northwest corner of section twenty-three (23), township twenty (20) S, range twenty-three E; from thence east two and one-half (2½) miles to the southwest corner of the southeast quarter
28 (¼) of section eighteen (18), township twenty (20) S, range twenty-four (24) E; from thence north one-half (½) mile to the northwest corner of the southeast quarter (¼) of said section eighteen (18) last aforesaid; from thence east one (1) mile to the southwest corner of the northeast quarter (¼) of section seventeen (17), township twenty (20), S, range twenty-four (24) E; from t-ence north three-fourths (¾) of a mile to the northwest corner of the southwest quarter (¼) of the southeast quarter (¼) of section eight (8), township twenty (20), S, range twenty-four (24) E; from thence east three-fourths (¾) of a mile to the northwest corner of the southeast quarter (¼) of the southwest quarter (¼) of section nine (9), township twenty (20) S, range twenty-four (24) E; from t-ence north one-fourth (¼) mile to the northwest corner of the northeast quarter (¼) of the southwest quarter (¼) of said section nine (9) last aforesaid; from thence east one-fourth (¼) mile to the northwest corner of the southeast quarter (¼) of said section nine (9) last aforesaid; from thence north one-half (½) mile to the northwest corner of the northeast quarter (¼) of said section nine (9) last aforesaid; from thence west two and one-half (2½) miles to the southwest corner of section six (6), township twenty (20) S, range twenty-four (24) E; from t-ence south one-half (½) mile to the southeast corner of the northeast quarter (¼) of section twelve (12) township twenty (20) S, range twenty-three (23) E; from thence west one-half (½) mile to the southwest corner of the northeast quarter (¼) of said section twelve (12) last aforesaid; from thence south one-half (½) mile to the southeast corner of the southwest quarter (¼) of said section twelve (12) last aforesaid; from thence west one-half (½) mile to the southwest corner of said section twelve (12), last aforesaid; from thence south one-half (½) mile to the southeast corner of the northeast quarter (¼) of section fourteen (14), township twenty (20) S range twenty-three
29 (23) E; from thence west one (1) mile to the southwest corner of the northwest quarter (¼) of said section fourteen (14) last aforesaid; from thence south one-half (½) mile to the southeast corner of section fifteen (15), township twenty (20) S, range twenty-three (23) E; from thence west one-half (½) mile to the (¼) southwest corner of the southeast quarter of said section fifteen (15) last aforesaid; from thence north one (1) mile to the northwest corner of the northeast quarter (¼) of said section — (15) last aforesaid; from thence east one-half (½) mile to the northeast corner of said section fifteen (15) last aforesaid; thence north one (1) mile to the northwest corner of section eleven (11), twp. twenty (20) S, range twenty-three (23) E; from thence east one (1) mile to the northeast corner od said section eleven (11), last aforesaid; from thence north one (1) — to the southwest corner of section thirty-six (36) township

nineteen (19) S, range twenty-three (23) E; from thence west along the township line about two and one-half (2½) miles to the west line of the swamp and overflowed land on Packwood creek; from thence northeasterly along the meandering west line of said swamp and overflowed land to the northeast corner of the southeast quarter (¼) of section thirteen (13), township nineteen (19) S, range twenty-three (23)E; from thence north to the northwest corner of section eighteen (18), township nineteen (19) S, range twenty-four (24) E; from thence east three (3) miles to the northwest corner of section fifteen (15), township nineteen (19) S, range twenty-four (24) E; from thence north one (1) mile to the northwest corner of section ten (10), township nineteen (19) S, range twenty-four (24) E; from thence east three (3) miles to the northeast corner of section twelve (12), township nineteen (19) S, range twenty-four (24) E; the place of beginning.

"We respectfully request that said district be designated as the Tulare irrigation district."

30	No. acres.		No. acres.
" 1. J. Goldman	900	J. W. Stufflebeem	160
" 2. J. C. Gist	80	J. B. Zumwalt	900
" 3. William Bruce	160	H. H. Francisco	40
" 4. C. H. Nelson	12½	F. Rosenthal	36
" 5. E. Lathrop	320	J. W. Dunlap	40
" 6. C. A. Hitchcock	80	Thos. H. Thompson	720
" 7. Geo. T. Trescott	100	S. S. Ingham	400
" 8. Jos. Kirkner	80	J. L. Bachelder	130
" 9. T. J. Gist	160	Frederick H. Wales	278
"10. Z. H. Morris	40	Joseph Merritt	160
"11. Alfred Fay	160	J. O. Lovejoy	50
"12. George Hewitt	226	J. W. Mackie	160
"13. B. Noussitou	260	James Stewart	180
"14. W. A. Jacobs	494	W. I. Burnett	1091
"15. W. H. Coggeshall	120	W. H. Alford	32
"16. J. W. Chinowith	84	M. H. Patton	160
"17. W. F. Cartmill	150	P. D. Fowler	90
"18. J. B. Hamilton	159	R. N. Haugh	243
"19. Sam. Newell	320	C. Dunning	93
"20. Rob't Newell	160	Anson P. Hall	20
"21. John W. Hooper	680	John M. Ginley	507
"22. E. J. Hodges	80	Luke F. Warren	480
"23. J. T. Chism	180	Amos Hicks	10
"24. W. F. Stewart	160	E. A. Braly	40
"25. S. Fowler	200	M. M. Burnett	500
"26. I. A. Moorehead	240	S. A. Blythe	20
"27. Eva M. Moody	80	O. S. Woodruff	20
"28. John A. Goble	40	H. K. Ayer	32
"29. Sam. Richardson	250	S. Weaver	380
"30. B. M. Alford	40	A. W. Stewart	80
"31. A. T. Cotton	320	O. B. Taylor	32
"32. R. H. Parrish	160	B. G. Parker	
"33. W. E. Brown	160	J. H. Aten	80
31 "34. E. T. Cosper	160	C. G. Hough	240
"35. W. H. Hillhoren	160	D. O. Hammon	180
"36. C. S. Jordon	320	J. W. Davis	30
"37. John C. Hawkins	80	E. Oakford	180
"38. H. E. Dye	160	John G. Eckles	3
"39. Theo. Harris	80	A. W. De Witt	20
"40. E. W. Dutcher	40	A. A. Hall	40

"41. J. F. Boller		J. H. Stufflebeem	480
"42. B. F. Moore	300	R. T. McMillen	32
"43. William Swall	160	G. W. Conner	5
"44. Jesse Richardson	60	R. S. Hill	145
"45. Amos Roberts	779	E. M. De Witt	640
"46. E. Nolfskill	779	J. M. Hart	30
"47. R. B. Snell	100	Clulli Averill	60
"48. H. S. Haseltine	140	F. M. Schultz	5
"49. Mary L. Smith	342	G. W. Kirkes	80
"50. J. E. Carter	80	C. H. Randell	160
"51. Wm. Carpenter	225	Wm. Dobson	7
"52. A. T. Fowler		Thomas Dobson	22
"53. Sol Ephraim	729	T. W. Maples	
"54. L. E. Schoenemann		Frank P. Taylor	
"55. A. J. Pillsbury		H. A. Charters	
"56. Chas. M. Hatch		Miles Ellsworth	
"57. H. Frank Tandy	10	G. Q. Gill	
"58. S. D. Ayers	170	L. H. Stokes	7
"59. S. Bowles		J. A. Allen	
"60. I. H. Hamm		E. W. Holland	
"61. L. Schoenfeld		R. K. Ham	
"62. R. Linder		R. S. Black	
"63. J. M. Alexander	170	Sam'l T. Alexander	1890
"64. D. W. Madden		R. Chandler	135½
"65. E. T. Bucknam		T. Bacigalupi	320
"66. S. Witkowski"			

And said simulated and pretended petition was then and
32 there filed, and ever since then has been and is now one of the public records of said board of supervisors, and of said Tulare county. That no other petition for the organization of said alleged and pretended Tulare irrigation district has ever been presented to, or filed with, said board of supervisors.

II.

For two weeks next preceding said time, to wit, during the month of June, 1889, said pretended petition was printed and published in a newspaper printed and published in said county of Tulare, namely, the "Tulare Weekly Register."

III.

That during the same period of time last mentioned there was printed and published in said newspaper and immediately following and below said pretended petition in the same column of said paper the following words and figures, to wit:

"*Notice.*

"Pursuant to the statutes in such cases made and provided notice is hereby given that the above and foregoing petition will be presented to the board of supervisors in and for the county of Tulare at their first regular meeting in the month of July, 1889, to wit, on Monday the 1st day of July, 1889, at which time any person or persons desiring so to do may present their objections, if any they have, why said petition should not be granted."

No other notice whatever of the hearing of said or any simulated petition or of any purported petition for the organization of said Tulare irrigation district was ever given or published, either by said pretended petitioners or otherwise.

IV.

Said purported and pretended notice was not signed by said petitioners or any of them or by any one, and the same did not specify any place where the petition therein referred to or any petition would be presented; and the same, for said reasons in addi-
33 tion to other reasons herein alleged, was illegal, null and void and constituted no notice whatever nor any process of law, and the same and all the proceedings subsequent thereto, and based and founded thereon which are herein alleged were and are, and each and every one of them is and was, without jurisdiction, and void and in violation of section 13 of article I of the constitution of this State, and of articles 5 and 14 of the amendments of the Constitution of the United States that no person shall be deprived of property without due process of law.

V.

Said simulated and pretended petition did not designate nor specify either the mode of irrigation, the common source or the system of works from or by which the lands of the signers thereof, the lands embraced within the boundaries of said proposed district, or any portion thereof or any lands could be irrigated.

VI.

Said simulated and pretended petition purported to be signed by fifty or more freeholders owning lands susceptible of one mode of irrigation from a common source and by the same system of works, but that it does not appear therein or therefrom whether the lands so referred to were situated within the boundaries of the said proposed district or outside of the said boundaries, nor where the same nor any portion of them were situated, nor whether said purported signers were freeholders nor that they were, nor any of them was a freeholder owning lands within the boundaries of the said proposed district. Nor were said several matters nor any of them found or determined by said board of supervisors nor entered in the minutes of said board at any time. In truth and in fact, said simulated and pretended petition was not signed by fifty or by a majority of the freeholders owning lands situate within the boundaries mentioned and described therein who desired to provide for the irrigation of their said lands.

34 VII.

Defendant further alleges that it has information and believes and so states the fact to be, that no evidence was taken by or before said board of supervisors at any time during the proceedings herein alleged for the purpose of ascertaining, nor did said board ascertain

at any time, how many of the persons whose names were signed to said pretended petition owned any real property within the proposed boundaries of said proposed district other than city or town lots, nor was said question considered by said board before taking final action upon said pretended petition.

VIII.

That at the time of the presentation of the petition, to wit, July 1st, 1899, the board of supervisors caused to be entered on the minutes of said board the following order:

"In the matter of the petition for the formation of the Tulare irrigation district.

"A petition praying for the formation of an irrigation district to be known as the Tulare irrigation district, having been this day filed and presented to this board and the necessary bond having been filed with said petition and it satisfactorily appearing to this board that due notice of the presentation of said petition has been given as required by law and the following-named persons, to wit, Geo. D. Bliss, D. O. Harrelson and James Turner, appeared and asked to have their lands excluded from said district, whereupon witnesses were sworn and examined on behalf of said parties. Thereupon the board ordered that the hearing of said petition be set for Saturday, July 6th, 1889, at ten o'clock a. m."

That on Saturday, July 6th, 1889, said board met pursuant to adjournment and caused to be entered the following order on its said minutes:

"In the matter of the formation of Tulare irrigation district.

35 "The board occupied the day in hearing testimony to have lands excluded from said district."

On Tuesday, July 9th, 1889, the board caused the following order to be entered on its said minutes:

"In the matter of the petition for the formation of the Tulare irrigation district.

"Application to have lands excluded from said district having been presented and filed, a motion was made by Supervisor Henderson that all the applicants who have a sufficient amount of water now or who would not be benefitted by the proposed system of irrigation be excluded from this district upon fixing the final boundaries by the board, which motion was carried by the following vote: Aye: Henderson, Newport, Borton. No: Woody."

That on Thursday, July 11th, 1889, the board caused the following order to be entered on its said minutes:

"In the matter of the petition of J. Goldman and others for the formation of an irrigation district.

"At a regular meeting of the board of supervisors of the county of Tulare, held at their usual place of meeting in the court-house at Visalia, on Monday the 1st day of July, 1889, J. Goldman, J. C. Gist, William Bruce and more than fifty other persons duly presented to this board a petition in writing signed by them respectively, praying that the lands embraced in the proposed district, the boundaries of which were set forth and particularly described in said petition, be organized into an irrigation district under the provisions of an act of the legislature of the State of California, entitled, 'An act to provide for the organization and government of irrigation districts and to provide for the acquisition of water and other property, and for the distribution of water thereby for irrigation purposes, approved March 7th, 1887.' Said petition was accompanied with a good and sufficient bond on behalf of petitioners in double the amount of the probable costs of organizing said district, conditioned that the said bondsmen will pay all said costs
36 in case said organization shall not be effected, which said bond was duly approved by said board of supervisors, and received with said petition and filed with the clerk of said board, and thereupon the further hearing and consideration of said petition and the matter of the organization of said therein proposed district was by said board duly continued and set for hearing on the 6th day of July, 1889, at ten o'clock, a. m. At which time the board duly convened and proceeded to the further hearing of the matter of said petition, and it appearing that several persons owning lands within the boundaries of said proposed district as set forth in said petition, were present before said board and had filed with the clerk of said board their several applications in writing asking that the lands severally owned by them be excluded from said irrigation district as finally fixed by said board upon the ground that such land will not be benefitted by irrigation by said system proposed in said petition, the board proceeded to hear the testimony and proofs offered in evidence by and on behalf of said petitioners, and by and in behalf of said applicants to have their lands excluded from said district, and the board having adjourned said hearing from time to time, and said testimony and proofs having been fully received, and the matter of the formation of said proposed district, and the proper boundaries having been fully argued to said board by attorneys representing the different parties having an interest in said matters, and the board having fully considered the testimony and proofs and arguments of said attorneys; now on this 11th day of July, 1889, finds the facts to be as follows, to wit: That said petition for the formation of said proposed irrigation district was duly signed by more than fifty freeholders owning lands susceptible of one mode of irrigation from a common source by the same system of works, which lands are embraced within the boundaries of said proposed district
37 as hereinafter modified, fixed and established by said board, and that said petitioners desire to provide for the irrigation

of said lands. That after said petition was signed by said petitioners and before the same was presented to this board as hereinafter stated, said petition together with a notice stating that said petition would be presented to this board on Monday, the 1st day of July, 1889, was duly published for three consecutive weeks next before said 1st day of July, 1889, in the 'Weekly Tulare Register' a weekly newspaper printed and published in said Tulare county, that on Monday, the 1st day of July, 1889, being the first day of the regular July meeting of this board, and this board being then convened in regular session, said petition was d-ly presented to this board and at the same time and accompanying said petition, said petitioners presented to this board a good and sufficient bond in double the amount of the probable costs of organizing said district, and conditioned that the boudsmen, the obligors in said bond named, will pay all costs in case said organization shall not be effected, which said bond was duly approved by this board, and filed with the clerk thereof.

"That in order to comply with the requirements of said act of the legislature hereinbefore cited, it is necessary to make changes in the boundaries of said district proposed by said petitioners and to exclude and except from the operation of said act of the legislature hereinbefore cited, and from said proposed district, certain lands within the exterior boundaries of said proposed district as the same are hereinafter and hereby established and defined for the reason that in the opinion of this board said lands so excepted are lands which will not be benefitted by irrigation by the same system of works applicable to the other lands in such proposed district, which lands so excepted are hereinafter specifically designated and described.

38 "That all the lands embraced within the boundaries of said proposed district as the same are hereinafter established and defined other than the lands excepted from the said proposed district and hereinafter specifically designated are susceptible of one mode of irrigation from a common source and by the same system of works.

"Wherefore it is ordered and adjudged by said board of supervisors that t-e boundaries of said proposed irrigation district be and they are hereby established and defined as follows, to wit:

"Commencing at the quarter-section corner on the east side of section 20, in township 19, south of range 25 east Mt. Diablo base and meridian; running thence west ½ mile, thence north ¼ mile, thence west ½ mile, thence north ¼ mile, thence west ½ mile, thence north ½ mile, thence west ½ mile, thence south ½ mile, thence west ½ mile, thence sout- ¼ mile, thence west ½ mile, thence south ¾ miles, thence west ½ mile, thence south 1 mile, thence west about 250 rods more or less to the east side of the Southern Pacific Railway right of way, thence a little west of north on said railway line ½ mile more or less to the center section line running east and west through section 27 in township 19 south, range 24 east, thence east ½ mile more or less, to quarter-section corner on the east side of said section 27, thence north ½ mile, thence west ¼ mile, thence north 1 mile, thence west ¼ mile, thence south ½ mile, thence west

¼ mile, thence north ½ mile, more or less, to the east side of the Southern Pacific Railway right of way, thence northerly along the said east line of the said right of way 1 mile, more or less, to the north line of section 16, township 19, south, range 24 east thence west 2½ miles, more or less, to the northwest corner of section 18, township 19, south, range 24 east, thence south ½ mile, more or less, to the northerly line of the United States survey of the swamp and overflowed land along the line of the Packwood creek, thence southwesterly following the meanders of said line of the swamp and overflowed land five miles more or less, to the township line between townships 19 and 20 south, at a point at or near the quarter-section corner on the south side of section 33, township 19 south, range 23 east, thence east on said township line ¾ miles more or less to the southwest corner of the southeast quarter of the southwest quarter of section 34, township 19 south, range 23 east, thence north ¼ mile, thence east ¼ mile, thence north ¾ miles, thence east 1½ miles, thence north 1 mile thence east ½ mile, thence south 1 mile, thence east 1½ miles, thence south 1 mile, thence west 1 mile, thence south 1 mile, thence west 2 miles, thence south 1½ miles, thence east ½ mile, thence north ½ mile, thence east 1 mile, thence north ½ mile, thence east ½ mile, thence north ½ mile, thence east 1 mile, thence north ¾ miles, thence east ½ mile, thence south ¼ mile, thence east ½ mile, thence south ¼ mile, thence west ½ mile, thence south ¼ mile, thence east 1 mile to the quarter-section corner on the south side of section 4, township 20 south, range 24 east, thence south ½ mile, thence west ¼ miles, thence south ¼ miles, thence west ¾ miles, thence south ¾ miles, thence west 1 mile, thence south ½ miles, thence west 2½ miles, thence south 2 miles, thence east 1 mile, thence north ½ mile, thence east 1 mile, thence south ½ mile, thence east ½ mile, thence north ½ mile, thence east ½ mile, thence south 1¼ miles, thence east ½ mile, thence south 2¼ miles, thence east 1 mile, more or less, to the channel of Elk bayou, thence following the meanders of said Elk bayou in a northeasterly direction about 3 miles more or less to the ¼-section line running north and south through section 2, township 21, south, range 24 east, thence north on said ¼-section line ½ mile more or less, to the northwest corner of the south ½ of northeast ¼ of said section 2, thence east ½ mile, thence north ¾ mile, thence west ½ mile thence north 1¼ miles, thence west ¼ mile, thence north about 60 rods to the line of the swamp and overflowed land on the northeast ¼ of section 27, township 20, south, range 24 east, thence along the meanderings of said line of the swamp and overflowed land in a northeasterly direction about 80 rods, more or less to where said line crosses section line between sections 22 and 27 in township 20, south range 24 east, thence east on said section line 10 rods more or less to the southeast corner of said section 22, thence north ¼ mile, thence east ½ mile, more or less, to the Southern Pacific railway, thence northerly along said railway 20 rods more or less, to the north line of the swamp and overflowed land on section 23, township 20 south, range 24 east, thence northeasterly about 3 miles, more or less, following the meanderings of said northerly line of said

swamp and overflowed land to the east line of section 18 at or near the ¼-section corner on the east side of said section 18, in township 20, south, range 25 east, thence north ½ mile, more or less, to the northeast corner of said section 18, thence west ½ mile, thence north ¾ miles, thence west ½ mile, thence north ¾ miles, thence east ½ mile, thence north ½ mile, thence east ½ mile, thence north ½ mile, thence west ½ mile, thence south ½ mile, thence west 1 mile, thence south ½ mile, thence west ½ mile, thence north ½ mile, thence east ½ miles, thence north ½ mile to the center of section 36, township 19 south, range 24 east, thence west ½ mile, thence north ½ mile, thence east ½ mile, thence north ½ mile, thence east 1 mile, thence south ½ mile, thence east ½ mile, thence north ½ mile, thence east ½ mile, thence north ½ mile, thence east 1 mile more or less to the line of the swamp and overflowed land on the northeast ¼ of section 29, township 19 south, range 25 east, thence southwesterly following the meanderings of said line of said swamp and overflowed land about ⅗ths of one mile more or less to the east line of the
41 west ½ of northwest ¼ of section 29 in township 19 south, range 25 east, thence south on said line 30 rods more or less to the southeast corner of said west ½ of the northwest ¼ of said section 29, thence west 30 rods more or less to the line of the swamp and overflowed land, thence southwesterly following the meanderings of said line of swamp and overflowed land about 40 rods to west line of said section 29, thence south on said section line about 140 rods more or less to the southwest corner of said section 29, thence east one mile, thence north 120 rods, thence west 40 rods, thence north 40 rods, thence east 40 rods, thence north one mile to the place of beginning.

"That the following is a particular description of the lands situate within the exterior boundaries of said proposed district hereinbefore referred to which are excpeted from the operation of said act of the legislature hereinbefore cited, and excepted and taken out of said proposed district, to wit:—

"S. E. ¼ of S. E. ¼ of sec. 24, N. ½ of N. ½ & S. E. ¼ of N. W. ¼, sec. 25, T. 19 S. R. 25 E., S. 142 A. of S. W. ¼ of sec. 3, E. ½ & N. E. ¼ & N. ½ of S. E. ¼ of sec. 15 W. ½ of N. W. ¼ of sec. 23, N. E. ¼ of N. W. ¼ & N. ½ of N. E. ¼ & fr'l 44 A. of S. E. ¼ of sec. 28, T. 20 S., R. 24 E.

"And it is hereby ordered that the said proposed district be and the same is hereby divided into five divisions as nearly equal in size as practicable, and numbered respectively first, second, third, fourth and fifth, as follows, to wit:"

(Here follows description of the separate boundaries of each division of said district.)

42 "And it is further ordered that — an election held in said district at the various polling places hereinafter specified and ordered within the boundaries of said district between the hours specified by law on Saturday the 24th day of August, 1889, for the purpose of determining whether said proposed district shall be organized under the provisions of said act of the legislature of

this State hereinbefore cited, and referred to, said irrigation district shall be known and designated as the 'Tulare irrigation district.'

"And it is further ordered that notice of such election signed by the chairman and clerk of this board and attested by the official seal of this board, be given, which notice shall describe the boundaries of said proposed district established by this board and shall designate the name of said proposed district, to wit, 'the Tulare irrigation district' and shall require the electors of said district to cast ballots which shall contain the *owrds*, 'Irrigation district—Yes' or 'Irrigation district—No,' or words equivalent thereto, and shall contain the names of persons to be voted for to fill the following offices of said proposed district, to wit: an assessor, a collector, a treasurer, and a board of five directors, one of said directors to be elected from each of said divisions of said proposed district herinbefore described and for the purpose of the election above provided for, election precincts are hereby ordered and established in said proposed district as follows, to wit:"

(Here follows a description of the five election precincts in said proposed district and also includes the names of the polling places and the names of the persons who are to act as election officers.)

IX.

43 And thereafter, to wit, on the 2nd day of September, 1889, said board of supervisors made the following entry on their minutes, to wit:

"The board of supervisors of Tulare county, State of California, met as a board of canvassers on Monday, the second day of September, 1889, for the purpose of determining the result of the special election held in said Tulare county, as follows: Held on the 24th day of August, 1889, to vote for and against the organization of the Tulare irrigation district and officers therefor.

"Present: D. V. Robinson, chairman. T. E. Henderson, James Barton, W. J. Newport, supervisors.

"Absent: Supervisor J. H. Woody.

"And the returns of said election being filed with the county clerk and *ex officio* clerk of said board they were this day opened and canvassed by said board of supervisors, from which it appears that there were cast for 'Irrigation district—Yes' and for 'Irrigation district—No.' and for each of the persons hereinafter named for the respective offices of such proposed irrigation district, the following votes, to wit:"

(Here follows a statement of number of votes cast for and against the proposed district and the number of votes cast for each candidate for each office in the proposed district and then proceeds as follows:)

"Now therefore we the board of supervisors of Tulare county, State of California, do hereby declare that at the special election held in said Tulare county on Saturday the 24th day of August, 1889, for the purpose of voting for and against the formation of a proposed irrigation district to be known as the Tulare irrigation district

and for officers for such district, the number of votes are correct as set forth in the foregoing statement.

44 "That the several candidates for the respective offices named and 'Irrigation district—Yes' and 'Irrigation district—No' received the whole number of votes set opposite their respective names and places in said statement.

"And we further declare the territory embraced in the following-described limits, to wit:

"Commencing at the quarter-section corner on the east side of section 20 in township 19 south of range 25 east, Mt. Diablo base and meridian, running thence west ½ mile, thence north ¼ mile, thence west ½ mile, thence north ¼ mile, thence west ½ mile, thence north ½ mile, thence west ½ mile, thence south ½ mile, thence west ½ mile, thence sout- ¼ mile, thence west ½ mile, thence south ¾ mile, thence west ½ mile, thence south 1 mile, thence west about 250 rods more or less to the east side of the Southern Pacific Railway right of way, thence a little west of north on said railway line ½ mile more or less to the center section line running east and west through section 27 in township 19 south range 24 east, thence east ½ mile, more or less, to quarter-section corner on the east side of said section 27, thence north ½ mile, thence west ¼ mile, thence north 1 mile, thence west ¼ mile, thence south ½ mile, thence west ½ mile, thence north ½ mile, more or less to the east side of the Southern Pacific Railway right of way, thence northerly along the said east line of the said right of way 1 mile, more or less to the north line of section 16, township 19 south, range 24 east, thence west 2½ miles more or less, to the northwest corner of section 18, township 19 south, range 24 east, thence south ½ mile more or less to the northerly line of the United States survey of the swamp and overflowed land along the line of the Packwood creek, thence southwesterly following the meanderings of said line of swamp and overflowed land, five miles more or less, to the township line between townships 19 and 20 south, at a point at or near

45 the quarter-section corner on the south side of section 33, township 19, south, range 23 east, thence east on said township line ¾ miles more or less to the southwest corner of the southeast quarter of the southwest quarter of section 34, township 19 south, range 23 east, thence north ¼ mile, thence east ¼ mile, thence north ¾ miles, thence east 1½ miles, thence north 1 mile, thence east ½ mile, thence south 1 mile, thence east 1½ miles, thence south 1 mile, thence west 1 mile, thence south 1 mile, thence west 2 miles, thence south 1½ miles, thence east ½ mile, thence north ½ mile, thence east 1 mile, thence north ½ mile, thence east ½ mile, thence north ½ mile, thence east 1 mile, thence north ¾ miles, thence east ½ mile, thence south ¼ mile, thence east ½ mile, thence south ¼ mile, thence west ½ mile, thence south ¼ mile, thence east 1 mile, to the quarter-section corner on the south side of section 4, township 20 south, range 24 east, thence south ½ mile, thence west ¼ mile, thence south ¼ mile, thence west ¾ miles, thence south ¾ miles, thence west 1 mile, thence south ½ mile, thence west 2½ miles, thence south 2 miles, thence east 1 mile, thence north ½ mile, thence east 1 mile,

thence south ¼ mile, thence east ½ mile, thence north ½ mile, thence east ½ mile, thence south 1¼ miles, thence east ½ mile, thence south 2¼ miles, thence east 1 mile more or less to the channel of Elk bayou, thence following the meanderings of said Elk bayou in a northeasterly direction about 3 miles more or less to the ¼-section line running north and south through section 2, township 21 south, range 24 east, thence north on said ¼-section line ½ mile more or less to the northwest corner of the south ½ of northeast ¼ of said section 2, thence east ½ mile, thence north ¾ mile, thence west ½ mile, thence north 1¼ miles, thence west ¼ mile, thence north about 60 rods to the line of the swamp and overflowed land on the northeast ¼ of section 27, township 20 south, range 24 east, thence along the meanderings of said line of the swamp
46 and overflowed land in a northeasterly direction about 80 rods more or less, to where said line crosses section line between section- 22 and 27 in township 20 south, range 24 east thence east on said section line 10 rods, more or less to the southeast corner of said section 22, thence north ¼ mile, thence east ½ mile, more or less to the Southern Pacific railway, thence northerly along said railway 20 rods more or less, to the north line of the swamp and overflowed land on section 23, township 20 south, range 24 east, thence northeasterly about 3 miles more or less, following the meanderings of said northerly line of said swamp and overflowed land to the east line of section 18, at or near the ¼-section corner on the east side of said section 18, in township 20 south, range 25 east, thence north ½ mile, more or less, to the northeast corner of said section 18, thence west ¼ mile, thence north ¾ miles, thence west ½ mile, thence north ¾ miles, thence east ¼ miles, thence north ½ mile, thence east ½ mile, thence north ½ mile, thence west ½ mile, thence south ½ mile, thence west 1 mile, thence south ½ mile, thence west ½ mile, thence south ½ mile, thence west ½ mile, thence north ½ mile, thence east ½ mile, thence north ½ mile to the center of section 36 township 19 south, range 24 east, t–ence west ½ mile, t–ence north ½ mile, thence east ½ mile, thence north ½ mile, thence east 1 mile, thence south ½ mile, thence east ¼ mile, thence *thence* north ½ mile, thence east ¼ mile, thence north ½ mile, thence east 1 mile more or less to the line of the swamp and overflowed land on the northeast*v* ¼ of section 29, township 19 south, range 25 east, thence south*w*asterly following the meanderings of said line of said swamp and overflowed land about ⅗ths of one mile, more or less, to the east line of the west ½ of northwest ¼ of section 29 in township 19 south, range 25 east, thence south on said line 30 rods more or less to the southeast corner of said west ½ of the northwest ¼ of said section 29, thence west 30 rods more or less to the line of the swamp and overflowed land, thence southwesterly following
47 the meanderings of said line of swamp and overflowed land about 40 rods to the west line of said section 29, thence south on said section line about 140 rods more or less to the southwest corner of said section 29, thence east one mile, thence north 120 rods, thence west 40 rods, thence north 40 rods, thence east 40 rods, thence north one mile to the place of beginning. Excepting there-

from S. E. ¼ of S. E. ¼ of sec. 24, N. ½ of N. ½ & S. E. ¼ of N. W. ¼ sec. 25 T. 19 S. R. 25 E. S. 142 A. of S. W. ¼ of sec. 3, E. ½ & N. E. ¼ & N. ½ of S. E. ¼ of sec. 15, W. ½ of N. W. ¼ of sec. 23, N. E. ¼ of N. W. ¼ & N. ½ of N. E. ¼ & fr'l 44 A. of S. E. ¼ of sec. 28, T. 20 S. R. 24 E. An irrigation district duly organized under the name and style of "Tulare irrigation district." Being situated in the county of Tulare, State of California, and we further declare that,

"A. P. Merritt was duly elected director in division No. 1 of said district;
"W. B. Cartmill " " " " " " " 2 " "
"J. W. Mackie " " " " " " " 3 " "
"S. Richardson " " " " " " " 4 " "
"J. F. Gibson " " " " " " " 5 " "
"A. O. Erwin " " " assessor of said district;
"Alfred Fay " " " collector " "
"John A. Goble " " " treasurer " "

"D. V. ROBINSON, *Chairman.*

"Attest: JOHN G. KNOX, *Clerk*,
"By T. W. HOLDER,
"*Deputy Clerk.*"

X.

Defendant further alleges that neither said petition hereinbefore set out at length, the petition referred to in said order so entered in said minutes nor any other petition or purported or pretended petition for the organization of, or pretended organization
48 of said or any irrigation district to be designated and known as Tulare irrigation district was or ever has been copied or set out at length in the minutes of said board of supervisors or designated, described, referred to or identified in any other way than as appears in the order of said board aforesaid so entered in its minutes, and it cannot be nor could it at any time have been ascertained or determined from said order or the minutes of said board of supervisors what petition was mentioned or referred to in said minutes, or filed with said board nor what said petition contained nor who were the signers or purported signers thereof, nor whether the same was a sufficient or legal petition, nor whether the purported signers of the same were legal or qualifies signers thereto, nor whether the real property situate within the boundaries of the proposed district mentioned therein (if any) were susceptible to one mode of irrrigation or of irrigation from a common source or of irrigation by the same system of works, nor in nor by what name said proposed district was to be known or organ*ganized*; nor what were the proposed boundaries thereof, nor what lands were included within said proposed boundaries or to be effected thereby, nor where the same were situated nor whether any of the real property owned by any of the signers thereof was *was* situated within the proposed boundaries thereof; nor whether the petition therein referred to was the same petition herein set out, nor any of said matters nor any other matter required to be stated was contained therein or known to said board or to any other persons interested therein except as hereinafter appears.

XI.

As defendant is informed and believes and so alleges, the bond referred to in said order of said board of supervisors as having been filed with said petition and the only bond filed therewith or in connection with said proceedings was in the words and figures following, to wit:

49 "Know all men by these presents that we, J. Goldman, A. T. Cotton, E. A. Braly, Alfred Fay and T. H. Thompson, residents of the county of Tulare, State of California, are jointly and severally held and firmly bound unto the County of Tulare, in the penal sum of one thousand dollars for the payment of which well and truly to be made unto said Tulare County, we jointly and severally bind ourselves, our and each of our heirs, executors and administrators firmly by these presents.

"Sealed with our seals and dated this 1st day of July, 1889.

"The condition of the above obligation is such, that whereas J. Goldman, J. C. Gist, William Bruce, C. H. Nelson and other their associates, have signed and published and propose to present herewith to the board of supervisors of said Tulare county, a petition praying that an irrigation district be organized in said county in conformity with the boundaries stated in said petition, to be called the Tulare irrigation district;

"And whereas said board of supervisors have estimated the probable cost of oganizing said district at the sum of $500,

"Now therefore if the above-bounden obligors shall well and truly pay, or cause to be paid to said Tulare County, all costs incurred in the organization of said irrigation district in case the organization shall not be effected then the above obligation to be null and void, otherwise to remain in full force, virtue and effect.

"J. GOLDMAN. [SEAL.]
"A. T. COTTON. [SEAL.]
"E. A. BRALY. [SEAL.]
"ALFRED FAY. [SEAL.]
"T. H. THOMPSON. [SEAL.]"

Endorsed: "Before the board of supervisors of Tulare Co. In the matter of the formation of Tulare irrigation district bond on behalf of petitioners. Presented and filed with the petition
50 this 1st day of July, 1889. John G. Knox, clerk, by A. H. Murray Jr., deputy. Approved July 1st, 1889. D. V. Robinson, chairman board of supervisors."

Said bond was filed with and became part of the public records of said board of supervisors and all persons were thereby notified of the character, contents and provisions thereof. The same did not constitute a bond and did not bind the purported signers thereof to the performance of any act whatever, or to the performance of any of the acts provided or contemplated by section 2 of said act; that the penal sum mentioned and provided therein is not made payable to the payee or obligee provided by law in said cases; that the

same is executed, given and delivered by the same persons whose names are signed to said pretended petition instead of by other persons not parties to said proceedings for the organization of said proposed district; and that for said reason said sureties were not competent to execute, give or deliver said or any bond required by the provisions of section 2 of said act.

For the said reasons said instrument was not a legal, valid or binding obligation or bond, nor sufficient either in form or substance within the true intent and meaning of said section 2 of said act; and the same did not confer jurisdiction or authority upon said board of supervisors to take any proceedings by reason thereof, nor to proceed to hear or act upon the petition therein referred to, nor any petition for the organization of an irrigation district; and that for said reasons, in addition to other reasons herein alleged, said board of supervisors had no jurisdiction or power to hear said or any petition for the organization of said Tulare irrigation district nor to take any proceedings whatever for the organization of said pretended irrigation district and all such proceedings so taken by said board of supervisors for the organization of said district, were and the same are illegal, null and void, and in contravention
51 of the constitutional provisions hereinbefore mentioned and of the provisions of said act and especially section 2 of said act.

XII.

Defendant alleges that the order of said board of supervisors hereinbefore set forth, attempting to establish the boundaries of said proposed district, was illegal, invalid and unauthorized, for said board thereby attempted to make certain important and material changes in the boundaries of said proposed district as the same were described and defined in and by said pretended petition and that the boundaries so attempted to be defined and established by the said board by their said order, were different from the boundaries mentioned and described in said pretended petition, and certain large bodies of agricultural land, which were included within the boundaries proposed by the said pretended petition, were not included within the, but were excluded from the, boundaries defined by said order of said board of supervisors without the consent of said petitioners and without any notice whatever to any of said petitioners or to any person or persons residing or owning real property within the boundaries defined in said pretended petition that said changes would be so made or that said proposed district, so attempted to be organized, would consist only of the real property included within the boundaries so established by said board of supervisors; and that said order in that particular and section 2 of said act, in so far as it provides for or permits said supervisors to make said changes in said boundaries on said final hearing, were and the same are in violation of section 1 of article III of the constitution of this State and of the constitutional provisions hereinbefore mentioned and referred to.

XIII.

Defendant further alleges upon its information and belief that no notice of said election was given by said board of supervisors
52 or otherwise, and said pretended location was, for said reasons unauthorized and invalid, and in violation of the constitutional provisions hereinbefore mentioned and referred to, and was without jurisdiction or process of law, and void.

XIV.

Defendant further alleges that said board of supervisors did not cause a copy of said order declaring said district organized as an irrigation district duly certified or otherwise, to be immediately or at all filed for record in the office of the county recorder of said Tulare county, and no copy of said order has ever been recorded in the office of the county recorder of said Tulare county.

XV.

Defendant further alleges that it does not appear from any of the proceedings had by said board of supervisors that any proof was made to said board of supervisors that the said organization election was held, nor was it ascertained or determined by said board that said election was in fact held, or that notice of said election was given by any one, either as required by law or at all, or, if said notice was given, by whom the same was given, nor whether said election, if held at all, was held or conducted in accordance with law and the order of said boad.

XVI.

Defendant further alleges that no other proceedings for the organization of said proposed district have ever been taken or had in any way, at any time, or at all.

XVII.

Defendant further alleges that none of the aforesaid changes in the boundaries of said proposed district is or was noted or specified in any way upon the minutes or records of said board of supervisors, nor could the same be ascertained therefrom in any other manner than as hereinbefore alleged, nor does it appear therein that any changes were so made, nor that changes so made were necessary or proper.

53 XVIII.

Defendant further alleges that a large amount of agricultural land, to wit, about thirty thousand acres, which was embraced within the boundaries defined in and by said pretended petition, was excluded by said board of supervisors by said order of July 11th, 1889, from the boundaries so attempted to be established and defined by said board, and was thereby excepted from the operation of said act, but that it was not found nor determined by the said board that the

land so excluded, nor any portion thereof, was not susceptible of irrigation by the same system of works applicable to the other lands of said proposed district, but that in truth and in fact, the same and the whole thereof was and is susceptible of irrigation by the same system of works applicable to the remaining lands of said proposed district defined in said petition, or defined by said board of supervisors.

XIX.

Defendant further alleges that for the aforesaid reasons and by reason of the facts, matters and things aforementioned, said simulated and pretended petition for the organization of said proposed irrigation district, said pretended and attempted notice of the hearing thereof, said attempted presentation thereof to said board of supervisors, said pretended bond of said petitioners, and all the proceedings of said board of supervisors aforesaid for the organization of said proposed district, were and are and each and every of them is unlawful, unauthorized, null and void, and in violation of the provisions of said act aforesaid and in contravention of the aforementioned constitutional provisions, and said Tulare irrigation district is not, therefore, and never has been legally or at all organized, nor existing, as an irrigation district, nor entitled to exercise the functions or powers, privileges or authorities of an irrigation district.

54 .

XX.

Defendant further alleges that said board of supervisors did not know that said petition, notice or bond was unlawful or unauthorized, or the proceedings aforesaid would have been taken or had by said board of supervisors for the organization of said district.

XXI.

Defendant further alleges, that, for the foregoing reasons and by reason of the foregoing facts, matters and things, said alleged and pretended irrigation district was not legally organized in accordance with the provisions of said act of March 7th, 1887, nor of any other act or law, nor at all, and was not during all or any of the time mentioned in said complaint and never has been and is not now an irrigation district. And there never have been and there are not now any officers of said alleged or pretended irrigation district and neither the several persons who are mentioned and referred to in said complaint nor any of them have at the times mentioned therein nor at any time, had any jurisdiction, power or authority of law whether to issue said alleged bonds or coupons or any of them, or any bonds or coupons whatever, and the same are and each and every of them is, and at all time- has been void, and does not constitute a legal, binding or valid obligation of said alleged or pretended irrigation district or any irrigation district and the same, so issued or pretended or attempted to be issued as alleged in said complaint, were and each and every of them was issued without due or any process of law and in violation of the provisions of said act

and of the provisions of section 13 of article I of the constitution of California, and of articles V and XIV of the amendments of the Constitution of the United States, that no person shall be deprived of property without due process of law and *contra bonas mores*.

And further answering said complaint, defendant alleges:

55 I.

That a pretended election for the alleged and pretended purpose of determining whether or not bonds of said alleged and pretended district, in the sum of five hundred thousand dollars should be issued, was pretended and attempted to be held in said pretended irrigation district by order of certain persons claiming and pretending to be and acting as directors of said district, on the 7th day of June, 1890. Said election was declared by an order of said pretended board of directors to have been carried in favor of the issuance of bonds of said district in said sum of five hundred thousand dollars. Thereafter, to wit, on the — day of June, 1890, said board of directors ordered that the bonds of said pretended district, in the sum of five hundred thousand dollars be issued in the manner and form prescribed by law, which order was then and there entered upon the minutes of said board and thereupon became and ever since has remained part of the records of said alleged board.

II.

Defendant further alleges on his information and belief, that at no time since the pretended organization of said alleged and pretended district, was a system of works or one mode of irrigation from a common source of supply ever established or located, nor was any common source of supply located or established for any irrigation system or system of irrigation works, by said pretended and alleged board of directors of said district, nor was any system of irrigation ever established for or by said alleged and pretended district and no line canals with the necessary branches therefor to irrigate the lands embraced within the said alleged and pretended district was ever fixed or determined upon by said pretended board or by any other person.

56 III.

Defendant further alleges on information and belief that none of said five hundred thousand dollars of alleged bonds of said alleged district have been used in the purchase at the par value thereof, of any lands, water rights, or other property necessary for the construction, use, supply, maintenance repair, improvement or betterment of canals or works or of lands for reservoirs for the storage of needful waters, nor have any of said alleged bonds been sold for ninety per cent. of the face value thereof, but said alleged and pretended board of directors of said alleged district have exchanged and disposed of said five hundred thousand dollars of said alleged bonds in the manner following, to wit:—

(a.) Said board of directors on or about the 1st day of January,

1891, exchanged $150,000 of the bonds of said alleged district, being 300 bonds of the denomination of five hundred dollars each, and numbered 1 to 300 inclusive, with the firm of J. Goldman & Co. for forty-five thousand dollars in cash, and a worthless water right on the St. John's river known as the Settler's ditch, and which water right from its location was wholly unavailable to irrigate any of the lands of said alleged district, and as part of the proceedings and for the purpose of making said exchange said board went through the form of advertising for bids for the bonds of said alleged district in the amount of fifty thousand dollars, for which bonds the said firm of J. Goldman & Co. bid ninety per cent. of the face or par value thereof, but said bid was made by said firm and accepted by said board with the understanding and agreement between said firm of J. Goldman & Co. and said board and as part of the consideration for said bid, that said board of directors should purchase from said firm of J. Goldman & Co. the said water right known as Settler's ditch for the sum of one hundred thousand
57 dollars, of the bonds of said alleged district.

(*b.*) That on or about the 15th day of April, 1892, the said board of directors exchanged one hundred and fifty thousand dollars of the bonds of said alleged district, being bonds number 419 to 719 inclusive, of the denomination of five hundred dollars each, for the canals, ditches and water rights claimed by the Kaweah Canal & Irrigation Company; that said board exchanged twenty thousand dollars of the bonds of said alleged district, being bonds numbered 719 to 758 inclusive, of the denomination of five hundred dollars each, for the ditches and canals claimed by the Rocky Ford Canal and Irrigation Company, which exchange was made at the same time said exchange was made for said Kaweah Canal & Irrigation Company That neither of said companies owned or possessed any water rights whatever at the time of said exchange, nor rights of way over the lands covered by any of the said canals or ditches; that said canals and ditches so purchased from the Kaweah Canal and Irrigation Company were not worth more than the sum of twenty thousand dollars, and the canals and ditches of said Rocky Ford Canal & Irrigation Company were not worth more than the sum of one thousand dollars, all of which was well known by the board of directors of said alleged district at the time of said exchanges.

(*c.*) That bonds numbered 387 to 397 inclusive, of the denomination of five hundred dollars each, were delivered to J. H. Woody and T. W. Maples on the 15th day of June, 1891, by said board of directors for labor on canals in said alleged district; that the debt for which the same was given in satisfaction was contracted for by said board of directors and said work was performed at a time when there was no money in the treasury of said alleged district applicable to the payment therefor.

(*d.*) That bonds of said alleged district numbered 341 to 386 inclusive, of the denomination of five hundred dollars each,
58 were, on the 3rd day of June, 1891, hypothecated by the board of directors of said alleged district, to the Bank of

Tulare of the city of Tulare, in this county and State, to secure the payment of a note in the principal sum of $20,250 executed by the members of said board of directors and divers other persons, which said note has been paid in full, and which bonds have not been returned to said district by said bank, nor have said bonds nor has any portion thereof ever been sold by said alleged district.

(e.) That bonds numbered 301 to 340 inclusive, 398 to 418 inclusive and 759 to 1,000 inclusive, each of the denomination of five hundred dollars, were between the 4th day of June, 1892, and the 13th day of January, 1893, delivered to one R. Linder by said board of directors at the rate of ninety per cent. of the face value of said bonds, in payment for labor on said canals and ditches.

IV.

Defendant further alleges that neither said Settler's ditch on said St. John's river nor the ditches nor canals of said Kaweah Canal & Irrigation Company nor the ditches nor canals of said Rocky Ford Canal & Irrigation Company, nor any waters thereof or flowing therein or in any of said ditches or canals or any part or parcel of them was in anywise connected with any system of irrigation that has ever been devised or adopted for said pretended district by the alleged board of directors thereof; that no notice of intention to exchange any of said bonds so exchanged for ditches or water rights or rights of way was ever given or published by said alleged board of directors or any one else; and the said exchanges of said alleged bonds so made were illegal and void and without authority of law, and in violation of the provisions of said act of the legislature, approved March 7th, 1887.

V.

59 Defendant further alleges that no notice of intention to exchange any of said pretended bonds for work or labor done or to be done on said alleged canals or ditches, was ever given or published by said board of directors of said alleged district, or any one else, and said exchanges were each of them illegal and void and without authority of law and in violation of the express provisions of the aforesaid act of the legislature of the State of California.

VI.

Defendant further alleges that all the bonds so given or delivered or exchanged for work done for said district or for said canals, ditches and pretended water rights as hereinbefore alleged, were to — taken and received at prices much less than the par value thereof; that the bonds so exchanged for labor were paid out and exchanged as aforesaid at the minimum price allowed by law for the sale thereof; that said bonds to the entire amount of five hundred thousand dollars of the par value thereof, as nearly as defendant can ascertain the same, *was* so illegally exchanged and disposed of by said board as hereinbefore alleged; that all the work so done and performed upon the canals and works of said alleged district in exchange for said bonds was contracted for and so done and per-

formed at a price therefor greatly in excess of the amount which would have been charged or received or paid therefor in cash, and for which said work could have been procured to have been done for cash, and said board of directors well knew said facts at the time of making said contracts for work and said exchanges, and that said excessive prices so paid *was* agreed upon and adopted by said board of directors and the parties to whom said bonds were delivered for the purpose and with the intention of enabling said board so to exchange said bonds for said work and for said canals and ditches, and that said persons receiving said bonds would not have entered into any agreement so made by them or any of them for performing said work in
60 exchange for bonds or in exchanging said canals or ditches or pretended water rights for said bonds, and would not have taken said bonds in payment or exchange for said work or ditches or pretended water rights except at a price much in excess of the reasonable price or value of said works and the cost for which said work could have been procured for cash, and in excess of a reasonable price or value for said canals, ditches and pretended water rights, and with a large discount from the par value of said bonds, and that said board of directors well knew said facts at the time of making said exchanges and each of them therefor; that for said reasons said alleged district and the owners of real property therein have been and are greatly damaged and injured thereby, and said exchanges of bonds as hereinbefore alleged were and the same are for said reasons, unlawful, unjust, oppressive and fraudulent, and against public policy and contrary to good morals, and in violation and in excess of the provisions of said act, and of the constitutional provisions hereinbefore referred to, and said board had no power, jurisdiction or authority to so dispose of said bonds or any of them.

VII.

Defendant further alleges that all the alleged bonds of said alleged district express upon their face that they were issued by authority of said act of March 7th, 1887, stating its title and deed of approval thereof, and in the sale, exchange or disposal of said bonds by said alleged district or board there was no warranty whatever of the validity thereof.

VIII.

Defendant alleges that none of the lands in said alleged district as the same was organized is or ever has been arid or desert or of such character that it would not produce usual and ordinary crops of ordinary vegetables, grains, cereals melons and other vege-
61 tables and fruits common to the climate thereof, or of other portions of the interior of said State or to agricultural lands elsewhere, without artificial irrigation but that on the contrary said lands for many years prior to the organization of said alleged district had been regularly cultivated and sown and planted with wheat, barley, alfalfa, orchards, vineyards, vegetables and other farm products and had heretofore produced and ever since has pro-

duced the usual fair and ordinary crops which should be produced upon the farm and agricultural lands; that said lands did not nor do the same now require artificial irrigation to make the same productive and profitable, and that for said reasons there was not at the time of the organization of said alleged district any legal or other reason or necessity for the organization of said alleged district for the purpose of artificially irrigating the lands thereof, or of any of said lands, or for the sale of the alleged bonds thereof.

IX.

For said reasons and other reasons herein alleged the organization of said alleged district, the pretended and attempted sale and exchange of the alleged bonds thereof, the levy and collection of assessments upon and against the lands of said district, and of the provisions of said act of the legislature of March 7th, 1887, so far as the same relate to said district, are and each of them is unconstitutional and void, and in violation of the provisions of articles V and XIV of the amendments to the Constitution of the United States, and of the provisions of section 13 of article I of the constitution of California, which provide that no person shall be deprived of property without due process of law, and in violation of the provisions of section 1 of article I of the constitution of California that all men have certain inalienable rights among which are those of acquiring, possessing and protecting property, and also in violation of article XIV of the amendments to the Constitution of the United States, that no State shall deny to any person within its jurisdiction the equal protection of the laws, and also in violation of the pro-
62 vision of the constitution aforesaid, that no private property shall be taken or damaged for public use without just compensation therefor.

X.

Defendant further alleges that a large portion of the land in said alleged district is not susceptible of irrigation and would not be benefitted but would be injured thereby, and the expense of preparing for irrigation such portions of said land as could — irrigated or benefitted by irrigation will be very l.. ge and disproportionate to any benefit which could be received therefrom by the owners thereof.

XI.

For the foregoing reasons the alleged system of irrigation provided for by said act and the board of directors of said district has been and is and will continue to be very unprofitable, burdensome and oppressive and the expense thereof wholly disproportionate to the benefits which have been or ever will be received by owners of real property in said district and impracticable and destructive to the interests and welfare of said people.

XII

Defendant further alleges that all the bonds of said district have been sold, exchanged and disposed of as hereinbefore alleged but

no sufficient water supply or water rights have been obtained or acquired by said district to irrigate more than one-fifth of the lands in said district in any one year, nor is there any available source of supply from which more water can be obtained; that the bonded indebtedness of said district, including the interest to grow due thereon if said bonds are valid, is nearly equal to the value of all the real property situate in said district.

XIII.

And defendant further alleges that upon the hearing of the petition for the organization of said Tulare irrigation district
63 before the board of supervisors of Tulare county as hereinbefore set forth, said board of supervisors attempted to and did establish and define the boundaries of said proposed Tulare irrigation district, but that the boundaries so established and defined by said board of supervisors and as set forth in said order so establishing the same, comprised and embraced four separate and distinct bodies of land, not contiguous to each other and which taken together did not and do not form one tract of land, and is not such a body of land as is contemplated or intended by said act of the legislature to be formed into or for an irrigation district, nor such a body of land as was petitioned to be organized into an irrigation district; and said order of said board was spread upon the minutes of said board and thereby became and ever since has continued to be a public record of said board and said county of Tulare, and all persons were notified thereby of the proposed boundaries of said district, and defendant alleges that by reason thereof, it never had and has not now any existence in fact as an irrigation district and has never had and has not now any authority to create any indebtedness or to issue any evidences of indebtedness and never had any authority to issue any of the bonds or coupons mentioned in plaintiff's complaint, or to perform any of the functions of a duly organized irrigation district; and that the act of said board of supervisors in so establishing the boundaries of said district so that it comprised four separate and distinct bodies of land not contiguous to each other, was without jurisdiction and is null and void; and the acts of the board of directors of said pretended Tulare irrigation district, in the issuance of the bonds hereinbefore mentioned and in plaintiff's complaint set forth, was without authority or power so to do, and the same are null and void.

XIV.

Defendant further alleges that the provisions of said act
64 of March 7th, 1887, in so far as the same conferred or attempted to confer upon boards of supervisors of counties in which a proposed district is situated, and especially the board of supervisors of the county of Tulare, State of California, power, jurisdiction or authority to hear the petition for the organization of the proposed irrigation district, to establish and define such boundaries as so changed to include four separate and distinct bodies of

land or otherwise, or to make an order dividing the proposed district into divisions, or to — notice of an election for the organization of such proposed district to be held therein, to hold or conduct such election, or to cast the vote thereat, to declare certain persons elected to offices in such district, to cause a certified copy of any such orders to be recorded in the office of the county recorder of each county in which any portion of the lands of such district is situated, or authorizing or permitting such board or boards of supervisors to *said* said or any other proceedings for the organization of an irrigation district, under the provisions of said act, are and each of them is unconstitutional, and void, and in conflict with the provisions of section 1 of article III and section 1 of article IV of the constitution of California for the reason that said act and said provisions thereof confer or at-empt to confer upon said boards of supervisors certain powers therein specified which can be legally exercised only by the legislature of the State, and in violation of the provisions of section 1 of article III of the constitution of California; and for the foregoing reasons, said alleged district has not and never has had any legal, valid or constitutional existence.

XV.

It is not intended by reason of any allegation or denial herein to concede or admit the legality of the organization of said alleged Tulare irrigation district, or the *de facto* or *de jure* existence
65 of any board of directors or any officers thereof, or of any bond thereof, or coupon attached thereto, at any time, or the validity of any act, bond or coupon mentioned herein or in plaintiff's complaint; but, on the contrary, expressly asserts and alleges that all and every thereof are and at all times have been wholly invalid, null and void, and imposed no obligations or liability upon the real property of said alleged district nor any of it, nor upon owners of property therein, or any of them.

And for a further and separate defense to plaintiff's complaint, defendant alleges that heretofore, to wit on the 11th day of August, 1890, the persons pretending to be the board of directors of said pretended Tulare irrigation district, pursuant to the provisions of an act of the legislature of the State of California, approved March 16th, 1889, known as the "confirmation act," filed in the superior court of the county of Tulare, State of California, a petition whereby said petitioners represented that said Tulare irrigation district was on or about the second day of September, 1889, duly organized as an irrigation district by the board of supervisors of said Tulare county under an act of the legislature of the State of California, approved March 7th, 1887, and that ever since such organization it had claimed in good faith to be and had existed as an irrigation district.

That the first board of directors of said district was duly elected under the provisions of said act; that at an election held on the 2nd day of April, 1890, J. W. Mackie, A. P. Merritt, W. B. Cartmill, E. De Witt, and J. F. Ginson were elected members of the board of directors of said district, and at such time constituted such board of

directors; that all the lands of said district were situated within Tulare county;

That the board of directors on or about the 12th day of May, 1890, estimated and determined the amount of money necessary to be raised by said district for the purpose of constructing the
66 canals and works necessary for the irrigation of the land of said district, and for water and water rights; and that said board estimated the sum of five hundred thousand dollars was necessary to be raised for said purposes, and determined that it was necessary that bonds of said district in the amount of said five hundred thousand dollars be issued and the same be sold in order to raise the money necessary for said purposes, provided the qualified electors should vote in favor of the issue of said bonds;

That said board called a special election at which should be submitted the question whether or not such bonds of said district should be issued in the amount so determined by said board; and that said election be held on the 7th day of June, 1890, and ordered that notices thereof be given by posting the same in each election precinct in each district, and also by publication in the "Weekly Tulare Register;" that notices of said election were posted and published as ordered by said board; that such election was in fact held in said district and conducted in conformity with the provisions of said act and the *the* returns from such election were filed in the office of said board of directors, and that on the 9th day of June, 1890, said board of directors canvassed such returns and ascertained therefrom and found and declared as the result of such election that 398 votes were cast at said election, and that 348 thereof were in favor of said issue of said bonds, and that 50 votes were cast against such issue of said bonds.

That said board caused the result of such election to be entered upon its minutes, and on the 1st day of July, 1890, ordered that the bonds of said district in said sum of five hundred thousand dollars be issued in the manner and form prescribed by law; that each of said bonds should be of the denomination of five hundred dollars, and should have attached thereto coupons for the instalments of the principal and for the semi-annual payment of the interest; that said bonds should be dated the same day and should state the date of its maturity, and stating therein the form
67 of said bonds and coupons for instalments of principal and coupon for interest and that one thousand thereof be prepared, executed and issued in such manner and form; and that thereafter on the 6th of August, 1890, said board of directors by its order declar*ing* its intention to sell said bonds in the amount of two hundred thousand dollars on the 17th day of November, 1890; that none of the said bonds had been sold but that all of the same remained unsold and praying that the proceedings for the issue and sale of said bonds be judicially examined, approved and confirmed by said court, and which proceedings was entitled "In the matter of Tulare irrigation district."

And thereafter, to wit on the — day of May, 1898, B. W. Jauchius, J. L. Gould, George G. Kelly, and Ralph Jones, by leave of court

had, filed their answer to said petition, denying that said irrigation district was duly organized as an irrigation district by said board of supervisors, and denying that it had claimed in good faith or otherwise to be an irrigation district; and alleging that the petition presented to the board of supervisors of said Tulare county, for the formation of said district was not signed by fifty nor by a majority of, the freeholders owning land in said pretended district;

That no notice of the time of the meeting at which said petition would be presented to said board of supervisors was ever given; that said board of supervisors, in violation of the express provisions of said act authorizing the formation of said district, changed the proposed boundaries so as to exclude fully thirty thousand acres of land susceptible of irrigation from the same system of works applicable to the other lands in said proposed district; and that upon the hearing of said petition, said board of supervisors defined the boundaries of such proposed district so that the same comprised and embraced four separate and distinct bodies of land not contiguous to each other and which was not such a body of land as is contemplated or intended to be organized as an irrigation district;

68 that said board of supervisors did not cause a copy of its order declaring the territory petitioned for organized as an irrigation district, to be filed for record in the office of the county recorder of Tulare county;

And denying that the board of directors of said district at any time estimated or determined the amount of money necessary to be raised by the said district for the purpose of constructing canals and works necessary for the irrigation of the lands of said district or for acquiring water or water rights therefor;

And denying that said board at any time estimated the sum of five hundred thousand dollars was necessary to be raised for such purposes; and alleging that at no time had the board of directors of said district estimated or determined the amount of money necessary to be raised by said district for the purposes of constructing canals and works necessary for the irrigation of the lands of said district, and for acquiring water and water rights therefor;

And alleging that at no time had its board of directors ever established or located or adopted any system of works for a mode of irrigation for the lands of said district from a common source of supply; and alleging that no plans or specifications for any system of irrigation or irrigation works were ever made whereby an estimate could be made by said board:

And alleging that said board of directors did not estimate that the sum of five hundred thousand dollars or any other sum would be necessary to be raised for the purposes mentioned in said petition; and denying that said board of directors ever determined that it was necessary or proper that bonds of said district to the amount of five hundred thousand dollars should be issued by said district or sold, in order to raise the amount of money necessary for said purposes;

69 And alleging that said board of directors did not at any time determine t-at it was necessary or proper that the bonds

of said district in the sum of five hundred thousand dollars be issued or sold to raise the money necessary for the purpose of constructing canals and ditches:

And alleging that said B. W. Jauchius, J. L. Gould, George G. Kelly, and Ralph Jones had been ever since the organization of said district and were at the time of the filing of their answer therein, owners of real estate within the boundaries of said district; and praying that the approval and confirmation of the proceedings had by said board of directors as aforesaid, and as alleged in said petition, be denied and that a decree be had adjudging said district illegally organized and void;

And thereafter such proceedings were had in said matter of Tulare Irrigation District, that on the 23rd day of November, 1898, there was entered therein the following order, to wit:

"In the Superior Court of the State of California in and for the County of Tulare.

"In the Matter of the Tulare Irrigation District.

"This cause came on regularly for hearing by stipulation of the parties hereto and the order of the court before said court on the 17th day of June, 1898, said board of directors petitioners herein appearing by E. W. Holland, as its attorney, and the defendants B. W. Jauchius, J. L. Gould, George G. Kelly and Ralph Jones, appearing herein by their attorneys C. L. Russell and G. W. Zartman; and the cause having been tried on said 17th day of June, 1898, by the court without a jury, and the testimony both oral and documentary, havin- been heard and t-e case having been submitted to the court for decision, and the court having made and filed its findings of fact and conclusions of law, and its order for judgment, entered in accordance therewith in favor of said defendant.

70 "Wherefore by reason of the law and the findings and order aforesaid it is ordered, adjudged and decreed:

"That the said Tulare irrigation district never was and is not now duly or legally organized by the directors of the board of supervisors of Tulare county on or about the second day of September, 1889, nor at any other time, and the same is not now a duly or legally organized irrigation district;

"That the first board of directors of said irrigation district were not duly or legally organized;

"That all the proceedings of said board of supervisors under and by virtue of which said irrigation district was organized and first board of directors of said district was elected are null and void, and approval of the same is hereby denied.

"And it is further ordered adjudged and decreed:

"That all the proceedings had by or under the authority and direction of the board of directors of said Tulare irrigation district for the purpose of the issuance and sale of the bonds of said district to the amount of $500,000.00 are null and void, and approval of the same is hereby denied.

"And it is further ordered, adjudged and decreed that the said

Tulare irrigation district ever since its attempted organization on or about the second day of September, 1889, as aforesaid, has never been and is not now a legally organized irrigation district; that it has never possessed and does not now possess any power or authority to issue or sell bonds of said district, create indebtedness, or perform any of the functions, franchises, or other acts of an irrigation district.

"And it is further ordered that petitioners pay the costs herein.

"WHEATON A. GRAY,
"*Judge of the Superior Court.*

"Dated this November 23rd, 1898."

71 And for a further and separate defense, defendant alleges that the said bonds and every part thereof and the other coupons therein sued upon, are and each and every of them is barred by the provisions of subdivision 1 of section 338 of the Code of Civil Procedure; and that said bonds and every part thereof and the other coupons therein sued upon are and each and every of them is barred by the provisions of section 337 of the Code of Civil Procedure.

Defendant is advised and believes and so alleges that if the judgment of the court is adverse to plaintiff and it is found and determined by the court herein that the bonds and coupons mentioned and described in said complaint, are or any of them is invalid, said plaintiff, unless restrained by order of this court, will transfer the same to some other person or persons for collection or otherwise, and said defendant will receive no benefit or advantage from said judgment but will thereafter be compelled to litigate the same matters involved herein with successive holders thereof from time to time hereafter and will be greatly and unlawfully harassed, annoyed, vexed, injured, damaged and involved in a multiplicity of suits and actions for the prevention of the collection thereof.

Wherefore defendant prays:

1. That plaintiff take nothing by this action.

2. That plaintiff be required by the judgment herein to deliver to the court all and singular the bonds mentioned in his complaint and all coupons and instalments of principal attached thereto, and all other coupons mentioned in his complaint, for cancellation, and that it be adjudged and decreed that the same are, and each and every of them is illegal, unlawful, null and void, and that the same be cancelled and destroyed and plaintiff be perpetually enjoined and restrained from transferring or circulating the same or
72 asserting the same or any of them against said alleged district.

3. For its costs of suit herein.

4. For such other and further relief as may be meet in the premises.

C. L. RUSSELL,
G. W. ZARTMAN,
Attorneys for Defendant.
JOHN GARBER,
GEORGE H. MAXWELL,
Of Counsel.

STATE OF CALIFORNIA, } ss:
County of Tulare, }

G. Q. Gill, being duly sworn, deposes and says: That he is one of the acting directors of the defendant named in the foregoing answer; that he has heard read the said answer, and knows the contents thereof, and that the same is true of his own knowledge except as to those matters which are therein stated on information and belief; and that as to those matters he believes it to be true.

C. Q. GILL.

Subscribed and sworn to before me this 29th day of May, 1899.

C. L. RUSSELL,
Notary Public in and for the County of Tulare, State of California.

[SEAL.]

(Ten-cent revenue stamp canceled.)

(Endorsed:) No. 859 In the superior court of Tulare county, State of California. Alfred Shepard plaintiff *vs.* Tulare Irrigation District, defendant Answer. Filed May 31 1899 Wm. M. Van Dyke clerk Chas. N. Williams, deputy G. W. Zartman Calvin L. Russell Tulare, Cal., attorneys for defendant.

73 In the Circuit Court of the United States, Ninth Circuit, in and for the Southern District of California.

ALFRED SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT, Defendant.

STATE OF CALIFORNIA, } ss:
County of Santa Clara, }

Wm. T. Aggeler, being duly sworn, deposes and says that at the times hereinafter mentioned, he was a citizen of the United States and a resident of the county of Santa Clara, State of California, and not interested in the service of the papers hereinafter mentioned; that on the 30th day of September, 1899, at the said county of Santa Clara, State of California, he served the notice of motion of B. W. Jauchius and George G. Kelly, by their attorneys, C. L. Russell and G. W. Zartman, in above-entitled action, and in said action also served therewith the affidavits of G. Q. Gill, C. H. Slaughter and J. M. Slinkard, which notice of motion and affidavits are hereto attached and made part hereof on S. F. Leib, Esq., attorney for plaintiff in said action, by delivering to and leaving with said S. F. Leib, Esq., a true copy of said notice of motion, and a true copy of said affidavits, at the time and place aforesaid.

WM. T. AGGELER.

Subscribed and sworn to before me this 2nd day of October, 1899.

[SEAL.]

H. E. WILCOX,
Notary Public in and for the County of Santa Clara, State of California.

74 In the Circuit Court of the United States, Ninth Circuit, in and for the Southern District of California.

ALFRED SHEPARD, Plaintiff.
vs.
TULARE IRRIGATION DISTRICT, Defendant.

STATE OF CALIFORNIA, *County of Tulare*, } ss:

G. Q. Gill, C. H. Slaughter and J. M. Slinkard, being duly sworn, each for himself deposes and says: That he is now and for more than two years last past has been a director of Tulare Irrigation District.

That said district is the defendant in the above-entitled cause, and that said cause is set for trial in said court on October 17th, 1899.

That the defendant has no funds of any description with which to meet the expenses and costs incident to the trial of said cause, or to make a proper defense thereto, and said district cannot make a proper defense to said action for said reason.

Deponent further states that said defendant will have no money to pay the expenses of an appeal, or to further prosecute said action in the event a judgment is rendered in favor of plaintiff herein.

That no part of the expenses already incurred in the defense of said action has been paid by said defendant for aforesaid reason, but such costs have been contributed by individual tax-payers of the said district, without any agreement by said defendant that they will be reimbursed therefor.

That although the amount involved in said action is small yet a decision therein practically settles the validity of about
75 $175,000 of the bonds issued by defendant, as an outstanding indebtedness against it.

That the board of directors of defendant, being responsible for the management of said cause, are unwilling that the defense of said action should be controlled by any other than themselves, unless other parties are permitted to intervene herein and defend said action upon their own responsibility in conjunction with defendant.

G. Q. GILL.
C. H. SLAUGHTER.
J. M. SLINKARD.

Subscribed and sworn to before me this 28th day of September, 1899.

[SEAL.]

C. L. RUSSELL,
Notary Public in and for the County of Tulare, State of California.

76 In the Circuit Court of the United States, Ninth Circuit, in and for the Southern District of California.

ALFRED SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT, Defendant.

The plaintiff in the above-entitled action, and S. F. Leib, Esq., his attorney of record, will please take notice that B. W. Jauchius and George G. Kelly, by their attorneys, C. L. Russell, G. W. Zartman, George H. Maxwell, and John Garber, will, on Monday, the 9th day of October, 1899, at the hour of ten o'clock a. m., or as soon thereafter as counsel can be heard, at the court-room of the above-entitled court, in the city of Los Angeles, State of California, move the court for an order permitting said B. W. Jauchius and George G. Kelly to intervene in the above-entitled action as a party therein, and unite with the defendant in resisting the claims of the plaintiff in such action.

Said motion will be made upon the affidavits of G. Q. Gill, C. H. Slaughter and J. M. Slinkard, and the proposed complaint in intervention, copies of which affidavits and proposed complaint are served herewith and hereto annexed, and upon the files, records and entire proceedings in said action.

Said motion will be based upon the grounds that said B. W. Jauchius and George G. Kelly are interested in the matter in litigation in said action, and in the success of the defendant therein; and upon the further ground that the defendant in said action is, for want of funds, unable to make any defense therein.

C. L. RUSSELL,
G. W. ZARTMAN,
Attorneys for Defendant.
GEORGE H. MAXWELL,
JOHN GARBER, *Of Counsel.*

77 (Endorsed:) No. 859 In the superior court of Tulare county, State of California. Alfred Shepard plaintiff *vs.* Tulare Irrigation District defendant Notice and affidavit. Filed Oct. 4 1899 Wm. M. Van Dyke clerk G. W. Zartman Calvin L. Russell Tulare, Cal. attorneys for intervenors—

78 At a stated term, to wit, the August term, A. D. 1899, of the circuit court of the United States of America, of the ninth judicial district, in and for the southern district of California, held at the court-room in the city of Los Angeles on Monday the ninth day of October, in the year of our Lord one thousand eight hundred and ninety-nine.

Present: The Honorable Olin Wellborn, district judge.

ALFRED SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT, Defendant. } No. 859.

This cause coming on this day to be heard on the petition of B. W. Jauchius and George G. Kelly, for an order permitting said B. W. Jauchius and George G. Kelly to intervene in the above-entitled action, as parties defendant therein and unite with the defendant in resisting the claim of the complainant therein, F. W. Burnett, Esq., appearing on behalf of complainant's counsel, and C. L. Russell, Esq., appearing as counsel for petitioners and said matter having been argued by said counsel, it is ordered that said petitioners' complaint in intervention be filed herein, and the same thereupon is filed herein, without prejudice to plaintiff's motion to strike the said complaint in intervention out, if he shall be so advised.

79 I, Wm. M. Van Dyke, clerk of the circuit court of the United States, for the southern district of California, do hereby certify the foregoing to be a full, true and correct copy of an original order made and entered by said court October 9th, 1899, in the cause entitled Alfred Shepard, plaintiff, *vs.* Tulare Irrigation District, defendant, No. 859, and remaining of record therein.

Attest my hand and the seal of said circuit court, this 30th day of March, A. D. 1901.

[SEAL.] WM. M. VAN DYKE, *Clerk.*

(Endorsed:) No. 859 U. S. circuit court ninth circuit, southern district of California. Alfred Shepard *vs.* Tulare Irrigation District. Certified copy order permitting filing of complaint in intervention Filed Mar. 30 1901 Wm. M. Van Dyke clerk

80 In the Circuit Court of the United States, Ninth Circuit, in and for the Southern District of California.

ALFRED SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT, Defendant.

STATE OF CALIFORNIA,
County of Santa Clara, } *ss.:*

Wm. T. Aggeler, being duly sworn, deposes and says, that at the times hereinafter mentioned, he was a citizen of the United States and a resident of the county of Santa Clara, State of California, and not interested in the service of the papers hereinafter mentioned; that on the 30th day of September, 1899, at the said county of Santa Clara, State of California, he served the proposed complaint in intervention of B. W. Jauchius and George G. Kelly, in the above-entitled action, which complaint in intervention is hereto annexed and made part hereof, on S. F. Leib, Esq., attorney for plaintiff in said action, by delivering to and leaving with said S. F. Leib, Esq.,

a true copy of said complaint in intervention, at the time and place aforesaid.

WM. T. AGGELER.

Subscribed and sworn to before me, this 2nd day of October, 1899.

[SEAL.] H. E. WILCOX,
Notary Public in and for the County of Santa Clara, State of California.

81 In the Circuit Court of the United States, Ninth Circuit, in and for the Southren District of California.

ALFRED SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT, Defendant; GEORGE G. KELLY and B. W. Jauchius, Intervenors.

Now comes George G. Kelly and B. W. Jauchius and by leave of court first had, file this their complaint in intervention in the above-entitled cause, and for grounds thereof allege and deny as follows, to wit:

I.

That said George G. Kelly is a citizen of the United States and a resident of the State of Massachusetts; that he is now and ever since the 1st day of January, 1889, has been the owner of the following-described land, situate within the boundaries of Tulare county, State of California, and within the boundaries of the alleged Tulare irrigation district, to wit, the south half of section thirty-three (33), township nineteen (19) south, range twenty-four (24) east, Mount Diablo base and meridian.

That said B. W. Jauchius is a citizen of the United States and a resident of the State of California; and ever since the 1st day of January, 1889, has been the owner of the following-described real property situate in said Tulare county and within the boundaries of said alleged Tulare irrigation district, to wit: Lots twenty-four (24) and twenty-five (25), block eighty-six (86); lots eleven (11) to sixteen (16), block seventy (70), Tulare city.

That each of said intervenors *are* interested in the subject-
82 matter of this action and in the success of the defendant herein in this: that if the bonds and coupons mentioned in plaintiff's complaint, are adjudged a valid claim against said alleged district, then the property of intervenors in said district will be assessed and taxes levied thereon to pay the claim of said plaintiff.

II.

Denies that defendant is or at any time mentioned in said complaint was or ever has been an irrigation district duly or otherwise incorporated under the laws of the State of California as an irrigation district under and pursuant to, or under or pursuant to, the provisions of an act of the legislature mentioned in said complaint, or

any other act of the legislature of the State of California, and denies that the defendant is or ever was a corporation.

III.

Denies that defendant ever since the 2nd day of July, 1889, or any other time, has been, or that it now is acting as such or any corporation, under such or any act of the legislature of said or any State, or otherwise or at all, or under the acts or any act of the legislature of said or any State amendatory thereof, or otherwise, or supplemental thereto or otherwise or at all, with its principal or any place of business in the county of Tulare, State of California, or elsewhere, or with the office of said or any corporation in said county of Tulare, except as hereinafter stated; denies that all or any of the lands embraced in the corporate or any limits of said corporation are or at any time have been within said county of Tulare in the State of California, except as hereinafter set forth.

IV.

Denies that in the month of May, 1890 or at any other time, the board of directors of defendant, pursuant to the provisions of said or any acts of said legislature, or otherwise or at all, estimated
83 and determined, or estimated or determined the amount of money necessary to be raised for the purpose of constructing the necessary or any irrigation canals and works or canals or works, or acquiring the necessary or any water and property and rights, or water or property or rights therefor, or of otherwise or at all carrying out the provisions of said or any acts, or estimated and determined, or estimated or determined, the amount of money necess-ry to be raised therefor or otherwise or at all to be the sum of $500,000 or any other sum; and denies that said board, immediately or otherwise, called a special or any election of the electors of said district at which should be submitted to such or any electors possessing the qualifications prescribed by said or any act or at all whether or not the bonds of said district should be issued in the amount so or otherwise determined of $500,000 or any other sum, except as hereinafter set forth.

V.

Denies that notice of such or any election was given by posting in three or any other number of public places in each or any election precinct of said district, for twenty or any other number of days, or by publication of said or any notice in any newspaper published in said county or elsewhere, or where the office of said board of directors of said district was required to be kept in the county of Tulare or elsewhere, once a week for three or any number of successive weeks or at all, or that said or any notices so posted and published, or so posted or published, specified the time of holding of such or any election, and the amount of bonds so or otherwise or at all proposed to be issued, except as hereinafter set forth.

VI.

Denies that at said election a majority or any other number of the votes cast were in favor of the bonds being issued to the
84 amount of $500,000 or in any other amount or at all, except as hereinafter stated.

VII.

Denies that thereupon or at any other time, or at all, the board of directors of said defendant caused the bonds of said defendant, in the amount of $500,000 or any other sum, or at all to be issued, except as hereinafter stated;

Denies that each of said or any bonds was for the principal sum of five hundred dollars, or any other number of dollars, or that the same were numbered consecutively or otherwise, or at all, from one to one thousand inclusive, or otherwise or at all, except as hereinafter stated;

Denies that all or any of said bonds, with the exception of said numbers, were all of precisely like tenor and form, or were at all of like tenor and form, or of like tenor or form, or were signed by the president and secretary, or by the president or secretary of said defendant, or that the seal of said board of directors was affixed to each or any of said bonds, except as hereinafter set forth.

VIII.

Denies that coupons for the payment of the interest payable on each or any of said bonds were attached thereto, or were signed by the secretary of defendant, except as hereinafter stated.

IX.

Denies that thereafter or at any other time, any part of said or any bonds were by the defendant or its board of directors sold, issued and delivered, or sold, issued or delivered, for ninety per cent. or any per cent. of their par value, or that the proceeds thereof were used for the construction of canals and irrigation works, or for the construction of canals or irrigation works for defendant; and denies that the remaining or any part of said or any bonds were exchanged, issued and delivered, or exchanged, issued or delivered, by
85 the defendant or its board of directors at their par value, for the conveyance to said district of water, water rights and other property for irrigation purposes, or for the conveyance of water, water rights or other property for irrigation purposes; and denies that defendant has thereby or otherwise been enabled to or has irrigated the lands of said district.

X.

Allege that they have no information, knowledge or belief as to the matters alleged in the second paragraph of page "4" of plaintiff's complaint, and upon that ground, deny that the parties who received the bonds and coupons or the bonds or coupons in said com-

plaint specifically numbered, upon such or any sale or exchange, by said district, sold, transferred and delivered, or sold or transferred or delivered said bonds and coupons or said bonds or coupons, to innocent or *bona fide* purchasers for the full value thereof, or for any value;

And deny that such or any purchasers last aforesaid or otherwise, so or otherwise or at all purchased said bonds and coupons, or said bonds or coupons, or so or otherwise or at all took or received the same for the full or any value thereof, then or at any other time or at all paid by them therefor in the usual or any course of business or at all, before any or all of them were due or dishonored, or in good faith or without full notice of all defects and invalidity of the same and of all of them, and of the title to them and all of them of the party and parties from whom they so received the same.

XI.

Deny that the defendant paid regularly or otherwise or at all as they fell due or at any other time the first eleven or any other number of instalments of interest in said bonds represented by said coupons mentioned in said complaint or otherwise or at all, except as hereinafter set forth.

86 XII.

Allege that intervenors have no knowledge, information or belief as to the matters stated in the first paragraph on page "6" of plaintiff's complaint, and upon that ground, intervenors deny that all of said or any unpaid coupons mentioned upon pages "5" and "6" of said complaint, were transferred or delivered to plaintiff previous to October 1st, 1896, or that plaintiff has ever since been absolute or any other owner, holder and bearer thereof, or the owner or holder or bearer thereof at all or that plaintiff bought a part of said unpaid coupons before their maturity, in good faith, or otherwise or at all, or in the usual course of business or otherwise or at all, or paid therefor their full or any value without full notice of all defects and invalidity of the same and all of them, and the title to them and all of them, by the party and parties from whom he purchased them.

And on the same ground deny that the remainder of said unpaid coupons were transferred to plaintiff as aforesaid or otherwise or at all by parties who had purchased the same or any of them before their maturity in good faith or otherwise or at all, in the usual or any other course of business or at all, *in the usual or any other course of business or at all*, or paid therefor their full value without full notice of all defects and invalidity of the same and all of them, and the title to them and all of them, of the party and parties from whom they so purchased them and all of them; and upon such grounds deny that said coupons bought by the plaintiff before their maturity or otherwise or at all are those attached to the bonds numbered in said paragraph on page "6" of said complaint.

And for a further answer and defense to said complaint intervenors allege:

87 I.

That on or about the first day of July, 1889, a certain simulated and pretended petition was pretended and attempted to be presented to the board of supervisors of the county of Tulare, State of California, at a regular meeting of said board which said simulated and pretended petition was in the words and figures following, to wit:

"*Petition.*

"To the honorable the board of supervisors of the county of Tulare, State of California:

"The undersigned, your petitioners herein, respectfully represent to your honorable body that we are freeholders owning land within the following-described district, all of which is situated within Tulare county; that we desire to provide for the irrigation of the same; that all of said proposed district as hereinafter described, is susceptible of one mode of irrigation from a common source and by the same system of works; that is to say, by conveying the waters of Kaweah river by means of dams thereon and by main and distributing canals therefrom.

"We therefore petition your honorable body and pray that said hereinafter-described district be organized an irrigation district under an act of the legislature of the State of California, entitled, 'An act to provide for the organization and government of irrigation districts and to provide for the acquisition of water and other property and for the distribution of water thereby for irrigation purposes,' approved March 7, 1887.

"The boundaries of said proposed district are as follows:

"Commencing at the northeast corner of section twelve (12) in township nineteen (19) S, range twenty-four (24) E; thence south one (1) mile to the northeast corner of section thirteen (13), township nineteen (19) S, range twenty-four (24) E; from
88 thence east two (2) miles to the northeast corner of section seventeen (17), township nineteen (19) S, range twenty-five (25) E; from thence south three (3) miles to the southeast corner of section twenty-nine (29), township nineteen (19) S, range twenty-five (25) E; from thence west one (1) mile to the southwest corner of section twenty-nine (29) last aforesaid; from thence south four (4) miles to the northwest corner of section twenty (20) township twenty (20) S, range twenty-five (25) E; from thence east one (1) mile to the northeast corner of said section twenty (20) last aforesaid; from thence south three (3) miles to the southeast corner of section thirty-two (32), township twenty (20) S, range twenty-five (25) E; from thence west to the northeast corner of section five (5), township twenty-one (21) S, range twenty-five (25) E; from thence south two (2) miles to the southeast corner of section eight (8), township twenty-one (21) S, range twenty-five (25) E; from thence west

ten (10) miles to the southwest corner of section eleven (11), township twenty-one (21) S. range twenty-three (23) E; from thence north two (2) miles to the northwest corner of section two (2), township twenty-one (21), S, range twenty-three (23) E; from thence east to the southwest corner of section thirty-one (31), township twenty (20) S, range twenty-four (24) E; from thence north one and one-half (1½) miles to the southeast corner of the northeast quarter (¼) of section twenty-five (25), township twenty (20) S, range twenty-three (23) E; from thence west to the southwest corner of the northwest quarter (¼) of said section twenty-five (25) last aforesaid; from thence south one-half (½) mile to the southeast corner of section twenty-six (26), township twenty (20) S, range twenty-three E; from thence west one (1) mile to the southwest corner of said section twenty-six (26) last aforesaid; from thence north two (2) miles to the northwest corner of section twenty-three (23), township twenty (20) S, range twenty-three E; from thence east two and one-half (2½) miles to the southwest corner of the southeast quarter
89 (¼) of section eighteen (18), township twenty (20) S, range twenty-four (24) E; from thence north one-half (½) mile to the northwest corner of the southeast quarter (¼) of said section eighteen (18) last aforesaid; from thence east one (1) mile to the southwest corner of the northeast quarter (¼) of section seventeen (17), township twenty (20) S, range twenty-four (24) E; from thence north three-fourths (¾) of a mile to the northwest corner of the southwest quarter (¼) of the southeast quarter (¼) of section eight (8), township twenty (20) S, range twenty-four (24) E; from thence east three-fourths (¾) of a mile to the northwest corner of the southeast quarter (¼) of the southwest quarter (¼) of section nine (9), township twenty (20) S, range twenty-four (24) E; from thence north one-fourth (¼) mile to the northwest corner of the northeast quarter (¼) of the southwest quarter (¼) of said section nine (9) last aforesaid; from thence east one-fourth (¼) mile to the northwest corner of the southeast quarter (¼) of said section nine (9) last aforesaid; from thence north one-half (½) mile to the northwest corner of the northeast quarter (¼) of said section nine (9) last aforesaid; from thence west two and one-half (2½) miles to the southwest corner of section six (6), township twenty (20) S, range twenty-four (24) E; from thence south one-half (½) mile to the southeast corner of the northeast quarter (¼) of section twelve (12) township twenty (20) S, range twenty-three (23) E; from thence west one-half (½) mile to the southwest corner of the northeast quarter (¼) of said section twelve (12) last aforesaid; from thence south one-half (½) mile to the southeast corner of the southwest quarter (¼) of said section twelve (12) last aforesaid; from thence west one-half (½) mile to the southwest corner of said section twelve (12), last aforesaid; from thence south one-half (½) mile to the southeast corner of the northeast quarter (¼) of
90 section fourteen (14), township twenty (20) S, range twenty-three (23) E; from thence west one (1) mile to the southwest corner of the northwest quarter (¼) of said section fourteen last aforesaid; from thence south one-half (½) mile to the southeast corner of section fifteen (15), township twenty (20) S, range twenty-

three (23) E; from thence west one-half (½) mile to the southwest corner of the southeast quarter (¼) of said section fifteen (15) last aforesaid; from thence north one (1) mile to the northwest corner of the northeast quarter (¼) of said section — (15) last aforesaid; from thence east one-half (½) mile to the northeast corner of said section fifteen (15) last aforesaid; thence north one (1) mile to the northwest corner of section eleven (11) twp. twenty (20) S range twenty-three (23) E; from thence east one (1) mile to the northeast corner of said section eleven (11), last aforesaid; from thence north one (1) mile to the southwest corner of section thirty-six (36), township nineteen (19) S, range twenty-three (23) E; from thence west along the township line about two and one-half (2½) miles to the west line of the swamp and overflowed land on Packwood creek; from thence northeasterly along the meandering west line of said swamp and overflowed land to the northeast corner of the southeast quarter (¼) of section thirteen (13), township nineteen (19) S, range twenty-three (23)E; from thence north to the northwest corner of section eighteen (18), township nineteen (19) S, range twenty-four (24) E; from thence east three (3) miles to the northwest corner of section fifteen (15), township nineteen (19) S, range twenty-four (24) E; from thence north one (1) mile to the northwest corner of section ten (10), township nineteen (19) S, range twenty-four (24) E; from thence east three (3) miles to the northwest corner of section twelve (12),
91 township nineteen (19) S, range twenty-four (24) E; the place of beginning.

"We respectfully request that said district be designated as the Tulare irrigation district."

	No. of acres.		No. of acres.
" 1. J. Goldman	900	J. W. Stufflebeem	180
" 2. J. C. Gist	80	J. B. Zumwalt	900
" 3. William Bruce	160	H. H. Francisco	40
" 4. C. H. Nelson	12½	F. Rosenthal	36
" 5. E. Lathrop	320	J. W. Dunlap	40
" 6. C. A. Hitchcock	80	Thos. H. Thompson	720
" 7. Geo. F. Trescott	100	S. S. Ingham	400
" 8. Jos. Kerkner	80	J. I. Bachelder	130
" 9. T. J. Gist	160	Frederick H. Wales	278
" 10. Z. H. Morris	40	Joseph Merritt	160
" 11. Alfred Fay	160	J. O. Lovejoy	50
" 12. George Hewitt	226	J. W. Mackie	160
" 13. B. Noussitou	260	James Stewart	180
" 14. W. A. Jacobs	494	W. I. Burnett	1091
" 15. W. H. Coggleshell	120	W. H. Alford	32
" 16. J. W. Chinowith	84	M. H. Patten	160
" 17. W. F. Cartmill	150	P. D. Fowler	90
" 18. J. B. Hamilton	159	R. N. Haugh	243
" 19. Sam. Newell	320	C. Dunning	93
" 20. Rob't Newell	160	Anson P. Hall	20
" 21. John W. Hooper	680	John M. Ginley	507
" 22. E. J. Hodges	80	Luke F. Warren	480
" 23. J. T. Chism	180	Amos Hicks	10
" 24. W. F. Stewart	160	E. A. Braly	40
" 25. S. Fowler	200	M. M. Burnett	500
" 26. I. A. Moorehead	240	S. A. Blythe	20
" 27. Eva M. Moody	80	O. S. Woodruff	20

	"28. John A. Goble.....	40	H. K. Ayer.....		32
92	"29. Sam. Richardson...	250	S. Weaver.....		380
	"30. B. M. Alford.....	40	A. W. Stewart.....		80
"31.	A. T. Cotton.....	320	O. B. Taylor.....		32
"32.	R. H. Parrish.....	160	B. G. Parker.....		
"33.	W. E. Brown.....	160	J. H. Aten.....		80
"34.	E. T. Cosper.....	160	C. G. Hough.....		240
"35.	W. H. Hillhoren.....	160	D. O. Hammon.....		180
"36.	C. S. Jordon.....	320	J. W. Davis.....		30
"37.	John C. Hawkins.....	80	E. Oakford.....		180
"38.	H. E. Dye.....	160	John G. Eckles.....		3
"39.	Theo. Harris.....	80	A. W. De Witt.....		20
"40.	E. W. Dutcher.....	40	A. A. Hall.....		40
"41.	J. F. Boller.....		J. H. Stufflebeem.....		480
"42.	B. F. Moore.....	300	R. T. McMillan.....		32
"43.	William Swall.....	160	G. W. Conner.....		5
"44.	Jesse Richardson.....	60	R. S. Hill.....		145
"45.	Amos Roberts.....	779	E. M. De Witt.....		640
"46.	E. Nolfskill.....	779	J. M. Hart.....		30
"47.	R. B. Snell.....	100	Clulli Averill.....		60
"48.	H. S. Haseltine.....	140	F. M. Schultz.....		5
"49.	Mary L. Smith.....	342	G. W. Kirkes.....		80
"50.	J. E. Carter.....	80	C. H. Randell.....		160
"51.	Wm. Carpenter.....	225	Wm. Dobson.....		7
"52.	A. T. Fowler.....		Thomas Dobson.....		22
"53.	Sol Ephraim.....	720	T. W. Maples.....		
"54.	L. E. Schoenemann.....		Frank P. Taylor.....		
"55.	A. J. Pillsbury.....		H. A. Charters.....		
"56.	Chas. M. Hatch.....		Miles Ellsworth.....		
"57.	H. Frank Tandy.....	10	G. Q. Gill.....		
"58.	S. D. Ayers.....	170	L. H. Stokes.....		7
"59.	S. Bowles.....		J. A. Allen.....		
	"60. I. H. Hamm.....		E. W. Holland.....		
93	"61. L. Schoenfeld.....		R. K. Ham.....		
	"62. R. Linder.....		R. S. Black.....		
"63.	J. M. Alexander.....	170	Sam'l T. Alexander.....		1890
"64.	D. W. Madden.....		R. Chandler.....		135½
"65.	E. T. Bucknam.....		T. Bacigalupi.....		320
"66.	S. Witkowski".....				

And said simulated and pretended petition was then and there filed, and ever since then has been and is now one of the public records of said board of supervisors, and of said Tulare county. That no other petition for the organization of said alleged and pretended Tulare irrigation district has ever been presented to, or filed with, said board of supervisors.

II.

For two weeks next preceding said time, to wit, during the month of June, 1889, said pretended petition was printed and published in a newspaper printed and published in said county of Tulare, namely, the "Tulare Weekly Register."

III.

That during the same period of time last mentioned there was printed and published in said newspaper and immediately following and below said pretended petition in the same column of said paper the following words and figures, to wit:

"*Notice.*

"Pursuant to the statutes in such cases made and provided notice is hereby given that the above and foregoing petition will be presented to the board of supervisors in and for the county of Tulare at their first regular meeting in the month of July, 1889, to wit, on Monday the 1st day of July, 1889, at which time any person or persons desiring so to do may present their objections, if any they have, why said petition should not be granted."

No other notice whatever of the hearing of said or any
94 simulated petition or of any purported petition for the organization of said Tulare irrigation district was ever given or published, either by said pretended petitioners or otherwise.

IV.

Said purported and pretended notice was not signed by said petitioners or any of them or by any one, and the same did not specify any place where the petition therein referred to or any petition would be presented; and the same, for said reasons in addition to other reasons herein alleged, was illegal, null and void and constituted no notice whatever nor any process of law, and the same and all the proceedings subsequent thereto, and vased and founded thereon which are herein alleged were and are, and each and every one of them is and was, without jurisdiction, and void and in violation of section 13 of article I of the constitution of this State, and of articles V and XIV of the amendments of the Constitution of the United States that no person shall be deprived of property without due process of law.

V.

Said simulated and pretended petition did not designate nor specify either the mode of irrigation, the *coom* source or the system of works from or by which the lands of the signers thereof, the lands embraced within the boundaries of said proposed district, or any portion thereof or any lands could be irrigated.

VI.

Said simulated and pretended petition purported to be signed by fifty or more freeholders owning lands susceptible of one mode of irrigation from a common source and by the same system of works, but that it does not appear therein or therefrom whether the lands so referred to were situated within the boundaries of the said proposed district or outside of the said boundaries, nor where the same nor any portion of them were situated, nor whether said pur-
95 ported signers were freeholders nor that they were, nor any of them was a freeholder owning lands within the boundaries of the said proposed district. Nor were said several matters nor any of them found or determined by said board of supervisors nor entered in the minutes of said board at any time. In truth and in fact, said simulated and pretended petition was not signed by fifty

or by a majority of the freeholders owning lands situate within the boundaries mentioned and described therein who desired to provide for the irrigation of their said lands.

VII.

Intervenors further alleg- that they have no information and believe and so state the fact to be, that no evidence was taken by or before said board of supervisors at any time during the proceedings herein alleged for the purpose of ascertaining, nor did said board ascertain at any time, how many of the persons whose names were signed to said pretended petition owned any real property within the proposed boundaries of said proposed district other than city or town lots, nor was said question considered by said board before taking final action upon said pretended petition.

VIII.

That at the time of the presentation of the petition, to wit, July 1st, 1889, the board of supervisors caused to be entered on the minutes of said board the following order:

"In the matter of the petition for the formation of the Tulare irrigation district.

"A petition praying for the formation of an irrigation district to be known as the Tulare irrigation district, having been this day filed and presented to this board and the necessary bond having been filed with said petition and it satisfactorily appearing to
96 this board that due notice of the presentation of said petition has been given as required by law and the following-named persons, to wit: Geo. D. Bliss, D. O. Harrelson and James Turner, appeared and asked to have their lands excluded from said district, whereupon witnesses were sworn and examined on behalf of said parties. Thereupon the board ordered that the hearing of said petition be set for Saturday, July 6th, 1889, at ten o'clock a. m."

That on Saturday, July 6th, 1889, said board met pursuant to adjournment and caused to be entered the following order on its minutes:

"In the matter of the formation of Tulare irrigation district.

"The board occupied the day in hearing testimony to have the lands excluded from said district."

On Tuesday, July 9th, 1889, the board caused the following order to be entered on its said minutes:

"In the matter of the petition for the formation of Tulare irrigation district.

"Application to have lands excluded from said district having been presented and filed, a motion was made by Supervisor Hender-

son that all the applicants who have a sufficient amount of water now, or who would not be benefitted by the proposed system of irrigation, be excluded from this district upon fixing the final boundaries by the board, which motion was carried by the following vote: Aye: Henderson, Newport, Borton. No: Woody."

That on Thursday, July 11th, 1889, the board caused the following order to be entered on its said minutes:

"In the matter of the petition of J. Goldman and others for the formation of an irrigation district.

"At a regular meeting of the board of supervisors of the county of Tulare, held at their usual place of meeting in the
97 court-house at Visalia, on Monday the 1st day of July, 1889, J. Goldman, J. C. Gist, William Bruce and more than fifty other persons duly presented to this board a petition in writing signed by them respectively, praying that the lands embraced in the proposed district, the boundaries of which were set forth and particularly described in said petition, be organized into an irrigation district under the provisions of an act of the legislature of the State of California, entitled, 'An act to provide for the organization and government of irrigation districts and to provide for the acquisition of water and other property, and for the distribution of water thereby for irrigation purposes, approved March 7th, 1887.' Said petition was accompanied with a good and sufficient bond on behalf of petitioners in double the amount of the probable costs of organizing said district, conditioned that the said bondsmen will pay all said costs in case said organization shall not be effected, which said bond was duly approved by said board of supervisors, and received with said petition and filed with the clerk of said board, and thereupon the further hearing and consideration of said petition and the matter of the organization of said therein-proposed district was by said board duly continued and set for hearing on the 6th day of July, 1889, at ten o'clock a. m. At which time the board duly convened and proceeded to the further hearing of the matter of said petition, and it appearing that several persons owning lands within the boundaries of said proposed district as set forth in said petition, were present before the board and had filed with the clerk of said board their several applications in writing asking that the lands severally owned by them be excluded from said irrigation district as finally fixed by said board upon the ground that such land will not be benefitted by irrigation by said system proposed in said petition, the board proceeded to hear the
98 testimony and proofs offered in evidence by and on behalf of said petitioners, and by and in behalf of said applicants to have their lands excluded from said district, and the board having adjourned said hearing from time to time, and said testimony and proofs having been fully received, and the matter of the formation of said proposed district, and the proper boundaries having been fully argued to said board by attorneys representing the different parties having an interest in

said matters, and the board having fully considered the testimony and proofs and arguments of said attorneys; now on this 11th day of July, 1889, finds the facts to be as follows, to wit:

"That said petition for the formation of said proposed irrigation district was duly signed by more than fifty freeholders owning lands susceptible of one mode of irrigation from a common source by the same system of works, which lands are embraced within the boundaries of said proposed district as hereinafter modified, fixed and established by said board, and that said petitioners desire to provide for the irrigation of said lands. That after said petition was signed by said petitioners and before the same was presented to this board as hereinafter stated, said petition together with a notice stating that said petition would be presented to this board on Monday, the 1st day of July, 1889, was duly published for three consecutive weeks next before said 1st day of July, 1889, in the 'Weekly Tulare Register' a weekly newspaper printed and published in said Tulare county, that on Monday, the 1st day of July, 1889, being the first day of the regular July meeting of this board, and this board being then convened in regular session, said petition was duly presented to this board and at the same time and accompanying said petition, said petitioners presented to this board a good and sufficient bond in double the amount of the probable costs of organizing said district, and conditioned that the bondsmen, the obligors in said bond named, will pay all costs in case said organization shall not be effected, which said bond was duly approved by this board, and filed with the clerk thereof.

99 "That in order to comply with the requirements of said act of the legislature hereinbefore cited, it is necessary to make changes in the boundaries of said district proposed by said petitioners and to exclude and except from the operation of said act of the legislature hereinbefore cited, and from said proposed district, certain lands within the exterior boundaries of said proposed district as the same are hereinafter and hereby established and defined for the reason that in the opinion of this board said lands so excluded are lands which will not be benefitted by irrigation by the same system of works applicable to the other lands in such proposed district, which lands so excepted are hereinafter specifically designated and described.

"That all the lands embraced within the boundaries of said proposed district as the same are hereinafter established and defined other than the lands excepted from the said*b* proposed district and hereinafter specifically designated are susceptible of one mode of irrigation from a common source and by the same system of works.

"Wherefore it is ordered and adjudged by said board of supervisors that vthe boundaries of said proposed irrigation district be and they are hereby established and defined as follows, to wit:

"Commencing at the quarter-section corner on the east side of section 20 in township 19 south of range 25 east, Mt. Diablo base and meridian; running thence west ½ mile, thence north ¼ mile, thence west ½ mile, thence north ¼ mile, thence west ½ mile,

thence north ½ mile, thence west ½ mile, thence south ½ mile, thence west ½ mile, thence south ½ mile thence west, ½ mile, thence south ½ mile thence west ½ mile, thence south 1 mile, thence west about 250 rods more or less to the east side of the Southern Pacific Railway right of way, thence a little west of north on said railway line ½ mile more or less to the center section line running east and
100 west through section 27 in township 19 south, range 24 east, thence east ½ mile more or less, to quarter-section corner on the east side of said section 27, thence north ½ mile, thence west ½ mile, thence north 1 mile, thence west ½ mile, thence south ½ mile, thence west ½ mile, thence north ½ mile, more or less, to the east side of the Southern Pacific Railway right of way, thence northerly along the said east line of the said right of way 1 mile, more or less, to the north line of section 16, township 19, south, range 24 east, thence west 2½ miles, more or less, to the northwest corner of section 18, township 19, south, range 24 east, thence south ½ mile, more or less, to the northerly line of the United States survey of the swamp and overflowed land along the line of the Packwood creek, thence southwesterly following the meanders of said line of the swamp and overflowed land five miles more or less, to the township line between townships 19 and 20 south, at a point at or near the quarter-section corner on the south side of section 33, township 19, south, range 23, east, thence east on said township line ¾ miles more or less to the southwest corner of the southeast quarter of the southwest quarter of section 34, township 19 south, range 23 east, thence north ¼ mile, thence east ¼ —, thence north ¾ miles, thence east 1½ miles, thence north 1 mile, thence east ½ mile, thence south 1 mile, thence east 1½ miles, thence south 1 mile, thence west 1 mile, thence south 1 mile, thence west 2 miles, thence south 1½ miles, thence east ½ mile, thence north ½ mile, thence east 1 mile, thence north ½ mile, thence east ½ mile, thence north ½ mile, thence east 1 mile, thence north ¾ miles, thence east ½ mile, thence south ¼ mile, thence east ½ mile, thence south ¼ mile, thence west ½ mile, thence south ¼ mile, thence east 1 mile to the quarter-section corner on the south side of section 4, township 20 south, range 24 east, thence south ½ mile, thence west ¼ mile, thence south ¼ mile, thence
101 west ¾ mile, thence south ¾ miles, thence west 1 mile, thence south ½ mile, thence west 2½ miles, thence south 2 miles, thence east 1 mile, thence north ½ mile, thence east 1 mile, thence south ½ mile, thence east ½ mile, thence north ½ mile, thence east ½ mile, thence south 1¼ miles, thence east ½ mile, thence south 2¼ miles, thence east 1 mile, more or less, to the channel of Elk bayou, thence following the meanderings of said Elk bayou in a northeasterly direction about 3 miles more or less to the ¼-section line running north and south through section 2, township 21 south, range 24 east, thence north on said ¼-section line ½ mile more or less, to the northwest corner of the south ½ of northeast ¼ of said section 2, thence east ¼ mile, thence north ¾ mile, thence west ¼ mile, thence north 1¼ miles, thence west ¼ mile, thence north about 60 rods to the line of the swamp and overflowed land

on the northeast ¼ of section 27, township 20 south, range 24 east, thence along the meanderings of said line of the swamp and overflowed land in a northeasterly direction about 80 rods, more or less to where said line crosses section line between sections 22 and 27 in township 20 south, range 24 east, thence east on said section line 10 rods more or less to the southeast corner of said section 22, thence north ¼ mile, thence east ½ mile, more or less to the Southern Pacific railway, thence northerly along said railway 20 rods more or less, to the north line of the swamp and overflowed land on section 23, township 20 south, range 24, east, thence northeasterly about 3 miles, more or less, following the meanderings of said northerly line of said swamp and overflowed land to the east line of section 18 at or near the ¼-section corner on the east side of said section 18, in township 20 south, range 25 east, thence north ½ mile, more or less, to the northeast corner of said section 18, thence west ½ mile, thence north ¾
102 miles, thence west ½ mile, thence north ¾ miles, thence east ½ mile, thence north ½ mile, thence east ½ mile, thence north ½ mile, thence west ½ mile, thence south ½ mile, thence west 1 mile, thence south ½ mile, thence west ½ mile, thence north ½ mile, thence east ½ mile, thence north ½ mile, to the center of section 36, township 19 south, range 24 east, thence west ½ mile, thence north ½ mile, thence east ½ mile, thence north ½ mile, thence east 1 mile, thence south ½ mile, thence east ½ mile, thence *thence* north ½ mile, thence east ½ mile, thence north ½ mile, thence east 1 mile, more or less to the line of the swamp and overflowed land on the northeast ¼ of section 29, township 19 south, range 25 east, thence southwesterly following the meanderings of said line of said swamp and overflowed land about ⅗ths of one mile more or less to the east line of the west ½ of northwest ¼ of section 29 in township 19 south, range 25 east, thence south on said line 30 rods more or less to the southeast corner of said west ½ of the northwest ¼ of said section 29, thence west 30 rods more or less to the line of the swamp and overflowed land thence southwesterly following the meanderings of said line of swamp and overflowed land about 40 rods to west line of said section 29, thence south on said section line about 140 rods more or less to the southwest corner of said section 29, thence east one mile, thence north 120 rods, thence west 40 rods, thence north 40 rods, thence east 40 rods, thence north one mile to the place — beg-nning.

"That the following is a particular description of the lands situate within the exterior boundaries of said proposed district hereinbefore referred to which are excepted from the operation of said act of the legislature hereinbefore cited, and excepted and taken out of said proposed district, to wit:—

"S. E. ¼ of S. E. ¼ of sec. 24, N. ½ of N. ½ & S. E. ¼ of
103 N. W. ¼, sec. 25, T. 19 S. R. 25 E., S. 142 A. of S. W. ¼ of sec. 3, E. ½ & N. E. ¼ & N. ½ of S. E. ¼ of sec. 15, W. ½ of N. W. ¼ of sec. 23, N. E. ¼ of N. W. ¼ & N. ½ of N. E. ¼ & fr'l 44 A. of S. E. ¼ of sec. 28, T. 20 S., R. 24 E.

"And it is hereby ordered that the said proposed district be and the same is hereby divided into five divisions as nearly equal in

size as practicable, and numbered respectively first, second, third, fourth and fifth, as follows, to wit"

(Here follows description of the separate boundaries of each division of said district.)

"And it is further ordered that — an election held in said district at the various polling places hereinafter specified and ordered within the boundaries of said district between the hours specified by law on Saturday the 24th day of August, 1889, for the purpose of determining whether said proposed district shall be organized under the provisions of said act of the legislature of this State, hereinbefore cited, and referred to, said irrigation district shall be known and designated as the 'Tulare irrigation district.'

"And it is further ordered that notice of such election signed by the chairman and clerk of this board and attested by the official seal of this board, be given, which notice shall describe the boundaries of said proposed district established by this board, and shall designate the name of said proposed district, to wit, 'the Tulare irrigation district' and shall require the electors of said district to cast ballots which shall contain the words, 'Irrigation district—Yes' or 'Irrigation district—No.' or words equivalent thereto, and shall contain the names of persons to be voted for to fill the following offices of said proposed district, to wit: an assessor, a collector, a treasurer, and a board of five directors, one of said directors to be elected from each of said divisions of said proposed district
104 hereinbefore described and for the purpose of the election above provided for, election precincts are hereby ordered and established in said proposed district as follows, to wit:"

(Here follows a description of the five election precincts in said proposed district, and also includes the names of the polling places and the names of the persons who are to act as election officers.)

IX.

And thereafter, to wit, on the 2nd day of September, 1889, said board of supervisors made the following entry on their minutes, to wit:

"The board of supervisors of Tulare county, State of California, met as a board of canvassers on Monday, the second day of September, 1889, for the purpose of determining the result of the special election held in Tulare county, as follows: Held on the 24th day of August, 1889, to vote for and against the organization of the Tulare irrigation district and officers therefor.

"Present: D. V. Robinson, chairman. T. E. Henderson, James Barton, W. J. Newport, supervisors.

"Absent: Supervisor J. H. Woody.

"And the returns of said election being filed with the county clerk and *ex officio* clerk of said board, they were this day opened and canvassed by said board of supervisors, from which it appears that there were cast for 'Irrigation district—Yes' and for 'Irrigation district—No.' and for each of the persons hereinafter named

for the respective offices of such proposed irrigation district, the following votes, to wit:"

(Here follows a statement of the number of votes cast for and against the proposed district and the number of votes cast for
105 each candidate for each office in the proposed district and then proceeds as follows:)

"Now, therefore, we the board of supervisors of Tulare county, State of California, do hereby declare that at the special election held in said Tulare county on Saturday the 24th day of August, 1889, for the purpose of voting for and against the formation of a proposed irrigation district, to be known as the Tulare irrigation district, and for officers for such district, the number of votes are correct as set forth in the foregoing statement.

"That the several candidates for the respective offices named and 'Irrigation district—Yes' a-d 'Irrigation district No' received the whole number of votes set opposite their respective names and places in said statement.

"And further declare the territory embraced in the following-described limits, to wit:

"Commencing at the quarter-section corner on the east side of section 20 in township 19 south, range 25 east, Mt. Diablo base and meridian, running thence west ½ mile, thence north ¼ mile, thence west ½ mile, thence north ¼ mile, thence west ½ mile, thence north ½ mile, thence west ½ mile, thence south ½ mile, thence west ½ mile, thence south ¼ mile, thence west ½ mile, thence south ¾ mile, thence west ½ mile, thence south 1 mile, thence west about 250 rods more or less to the east side of the Southern Pacific Railway right of way, thence a little west of north on said railway line ½ mile more or less to the center section line running east and west through section 27 in township 19 south, range 24 east, thence east ½ mile more or less, to quarter-section corner on the east side of said section 27, thence north ½ mile, thence west ¼ mile, thence north 1 mile, thence west ¼ mile, thence south ½ mile, thence west ½ mile, thence north ½ mile more or less to the east side of the Southern Pacific Railway right of way, thence northerly along the said east
106 line of the said right of way 1 mile, more or less, to the north line of section 16, township 19, south, range 24 east, thence west 2½ miles more or less, to the northwest corner of section 18, township 19 south, range 24 east, thence south ½ mile more or less to the northerly line of the United States survey of the swamp and overflowed land along the line of the Packwood creek, thence southwesterly following the meanders of said line of the swamp and overflowed land five miles more or less, to the township line between townships 19 and 20 south, at a point at or near the quarter-section corner on the south side of section 33, township 19, south, range 23 east, thence east on said township line ¾ miles more or less to the southwest corner of the southeast quarter of the southwest quarter of section 34, township 19 south, range 23 east, thence north ¼ mile, thence east ¼ mile, thence north ¾ miles, thence east 1½ miles, thence north 1 mile, thence east

¼ mile, thence south 1 mile, thence east 1½ miles, thence south 1 mile, thence west 1 mile, thence south 1 mile, thence west 2 miles, thence south 1½ miles, thence east ½ mile, thence north ½ mile, thence east 1 mile, thence north ½ mile, thence east ½ mile, thence north ½ mile, thence east 1 mile, thence north ¾ miles, thence east ½ mile, thence south ½ mile, thence west ½ mile, thence south ½ mile, thence east 1 mile to the quarter-section corner on the south side of section 4, township 20 south, range 24 east, thence south ½ mile, thence west ½ mile, thence south ½ mile, thence west ¾ miles, thence south ¾ — thence west 1 mile, thence south ½ mile, thence west 2½ miles, thence south 2 miles, thence east 1 mile, thence north ½ mile, thence east 1 mile, thence south ½ mile, thence east ½ mile, thence north ½ mile, thence east ½ mile, thence south 1¼ miles, thence east ½ mile, thence south 2½ miles, thence east 1 mile more or less to the channel of Elk
107 bayou, thence following the meanderings of said Elk bayou in a northeasterly direction about 3 miles more or less to the ¼-section line running north and south through section 2, township 21, south, range 24 east, thence north on said ¼-section line ½ mile more or less to the northwest corner of the south ½ of northeast ¼ of said section 2, thence east ½ mile, thence north ¾ mile, thence west ½ mile, thence north 1¼ mile-, thence west ¼ mile, thence north about 60 rods to the line of the swamp and overflowed land on the northeast ¼ of section 27, township 20, south range 24 east, thence along the meanderings of said line of the swamp and overflowed land in a northeasterly direction about 80 rods more or less, to where said line crosses section line between sections 22 and 27 in township 20 south, range 24 east thence east on said section line 10 rods, more or less to the southeast corner of said section 22, thence north ¼ mile, thence east ½ mile, more or less to the Southern Pacific railway, thence northerly along said railway 20 rods more or less, to the north line of the swamp and overflowed land on section 23, township 20, south, range 24 east, thence northeasterly about 3 miles, more or less, following the meanderings of said northerly line of said swamp and overflowed land to the east line of section 18 at or near the ¼-section corner on the east side of said section 18 in township 20 south, range 25 east, thence north ½ mile, more or less, to the northeast corner of said section 18, thence west ¼ mile, thence north ¾ miles, thence west ½ mile, thence north ¾ miles, thence east ¼ mile, thence north ½ mile, thence east ½ mile, thence north ½ mile, thence west ½ mile, thence south ½ mile, thence west 1 mile, thence south ½ mile, thence west ½ mile, thence south ½ mile, thence west ½ mile, thence north ½ mile, thence east ½ mile, thence north ½ mile to the center of section 36, township 19 south, range 24 east, thence west ½ mile, thence north
108 ½ mile, thence east ½ mile, thence north ½ mile, thence east 1 mile, thence south ½ mile thence east ½ mile, thence *thence* north ½ mile, thence east ½ mile, thence north ½ mile, thence east 1 mile more or less, to the line of the swamp and overflowed land on the northeast ¼ of section 29, township 19 south, range 25 east, thence southwesterly following the meanderings of said line of said swamp

and overflowed land about ⅘ths of one mile, more or less, to the east line of the west ½ of northwest ¼ of section 29 in township 19 south, range 25 east, thence south on said line 30 rods more or less, to the southeast corner of said west ½ of the northwest ¼ of said section 29, thence west 30 rods, more or less to the line of the swamp and overflowed land, thence southwesterly following the meanderings of said line of swamp and overflowed land about 40 rods to west line of said section 29, thence south on said section line about 140 rods, more or less to the southwest corner of said section 29, thence east one mile, thence north 120 rods, thence west 40 rods, thence north 40 rods, thence east 40 rods, thence north one mile to the place — beginning. Excepting therefrom S. E. ¼ of S. E. ¼ of sec. 24, N. ½ of N. ½ & S. E. ¼ of N. W. ¼, sec. 25, T. 19 S. R. 25 E., S. 142 A. of S. W. ¼ of sec. 3, E. ½ & N. E. ¼ & N. ½ of S. E. ¼ of sec. 15, W. ½ of N. W. ¼ of sec. 23, N. E. ¼ of N. W. ¼ & N. ½ of N. E. ¼ & fr'l 44 A. of S. E. ¼ of sec. 28, T. 20, S., R. 24 *x* E. An irrigation district duly organized under the name and style of 'Tulare irrigation district' Being situate in the county of Tulare, State of California, and we further declare that,

"A. P. Merritt was duly elected director in division No. 1 of said district;
"W. B. Cartmill " " " " " " " 2 " "
"J. W. Mackie " " " " " " " 3 " "
"S. Richardson " " " " " " " 4 " "
"J. F. Gibson " " " " " " " 5 " "
"A. O. Erwin " " " assessor of said district.

109 "Alfred Fay was duly elected collector of said district.
"John A. Goble was duly elected treasurer of said district.
"D. V. ROBINSON, *Chairman.*

"Attest: JOHN G. KNOX, *Clerk,*
"By T. W. HOLDER,
"*Deputy Clerk.*"

X.

Intervenors further allege that neither said petition hereinbefore set out at length, the petition referred to in said order so entered in said minutes, nor any other petition or purported or pretended petition for the organization of, or pretended organization of said or any irrigation district to be designated and known as Tulare irrigation district, was or ever has been copied or set out at length in the minutes of said board of supervisors, or designated, described, referred to or identified in any other way than as appears in the order of said board aforesaid so entered in its minutes, and it cannot be nor could it at any time have been ascertained or determined from said order or the minutes of said board of supervisors what petition was mentioned or referred to in said minutes, or filed with said board nor what said petition contained or who were the signers or purported signers thereof, nor whether the same was a sufficient or legal petition, or whether the purported legal signers thereof nor whether the same was a sufficient or legal petition, or whether the purported signers of the same were

legal or qualified signers thereto, nor whether the real property situate within the boundaries of the proposed district mentioned therein (if any) were susceptible to one mode of irrrigation or of irrigation from a common source, or of irrigation by the same system of works, nor in nor by what name said proposed district was to be known or organized; nor what were the proposed boundaries thereof, nor what lands were included within said proposed boundaries or to be effected thereby, nor where the same were situated, nor whether any of the real property owned by any of the signers thereof was situated within the proposed boundaries thereof; nor whether the petition therein referred to was the same petition herein set out; nor any of said matters, nor any other matter required to be stated, was contained therein or known to said board or to any other persons interested therein except as hereinafter appears.

XI.

Intervenors allege that the order of said board of supervisors, hereinbefore set forth, attempting to establish the boundaries of said prpposed district, was illegal, invalid and unauthorized, for said board thereby attempted to make certain important and material changes in the boundaries of said proposed district as the same were described and defined in and by said pretended petition and that the boundaries so attempted to be defined and established by the said board by their said order, were different from the boundaries mentioned and described in said pretended petition, and certain large bodies of agricultural land, which were included within the boundaries proposed by the said pretended petition, were not included within the, but were excluded from the, boundaries defined by said order of said board of supervisors, without the consent of said petitioners and without any notice whatever to any of said petitioners or to any person or persons residing or owning real property within the boundaries defined in said pretended petition that said changes would be so made or that said proposed district, so attempted to be organized, would consist only of the real property included within the boundaries so established by said board of supervisors; and that said order in that particular and section 2 of said act, in so far as it provides for or permits said supervisors to make said changes in said boundaries on said final hearing, were and the same are in violation of section 1 of article III of the constitution of this State and of the constitutional provisions hereinbefore mentioned and referred to.

XII.

Intervenors further allege on their information and belief that no notice of said election was given by said board of supervisors or otherwise, and said pretended election, was for said reasons unauthorized and invalid, and in violation of the cons-tutional provisions hereinbefore mentioned and referred to, and was without jurisdiction or process of law, and void.

XIII.

Intervenors further alleg- that said board of supervisors did not cause a copy of said order declaring said district organized as an irrigation district duly certified or otherwise, to be immediately or at all filed for record in the office of the county recorder of said Tulare county, and no copy of said order has ever been recorded in the office of the county recorder of said Tulare county.

XIV.

Intervenors further alleg- that it does not appear from any of the proceedings had by said board of supervisors that any proof was made to said board of supervisors that the said organization election was held, nor was it ascertained or determined by said board that said election was in fact held, or that notice of said election was given by any one, either as required by law or at all, or, if said notice was given, by whom the same was given, nor whether said election, if held at all, was held or conducted in accordance with law and the order of said board.

XV.

Intervenors further alleg- that no other proceedings for the organization of said proposed district have ever been taken or had in any way, at any time, or at all.

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XVI.

Intervenors further allege that none of the aforesaid changes in the boundaries of said proposed district is or was noted or specified in any way upon the minutes or the records of said board of supervisors, nor could the same be ascertained therefrom in any other manner than as hereinbefore alleged, nor does it appear therein that any changes were so made, nor that changes so made were necessary or proper.

XVII.

Intervenors further alleg- that a large amount of agricultural land, to wit, about thirty thousand acres, which was embraced within the boundaries defined in and by said pretended petition, was excluded by said board of supervisors by said order of July 11th, 1889, from the boundaries so attempted to be established and defined by said board, and was thereby excepted from the operation of said act, but that it was not found nor determined by the said board that the land so excluded, nor any portion thereof, was not susceptible of irrigation by the same system of works applicable to the other lands of said proposed district, but that in truth and in fact, the same and the whole thereof was and is susceptible of irrigation by the same system of works applicable to the remaining lands of either said proposed district defined in said petition, or defined by said board of supervisors.

XVIII.

Intervenors further allege that for the aforesaid reasons and by reason of the facts, matters and things aforementioned, said simulated and pretended petition for the organization of said proposed irrigation district, said pretended and attempted notice of the hearing thereof, said attempted presentation thereof to said board of supervisors, said pretended bond of said petitioners, and all the proceedings of said board of supervisors aforesaid for the organization of said proposed district
113 were and are, and each and every of them is, unlawful unauthorized, null and void, and in violation of the provisions of said act aforesaid and in contravention of the aforementioned constitutional provisions, and said Tulare irrigation district is not, therefore, and never has been legally or at all organized, nor existing, as an irrigation district, nor entitled to exercise the functions or powers, privileges or authorities of an irrigation district.

XIX.

Intervenors further allege that said board of supervisors did not know that sai l petition, notice or bond was unlawful or unauthorized, or the proceedings aforesaid would have been taken or had by said board of supervisors for the organization of said district.

XX.

Intervenors further allege that, for the foregoing reasons and by reason of the foregoing facts, matters and things, said alleged and pretended irrigation district was not legally organized in accordance with the provisions of said act of March 7th, 1887, nor of any other act or law, nor at all, and was not during all or any of the time mentioned in said complaint and never has been and is not now an irrigation district.

And there never have been and there are not now any officers of said alleged or pretended irrigation district, and neither the several persons who are mentioned and referred to in said complaint nor any of them have, at the times mentioned therein, nor at any time, had any jurisdiction, power or authority of law whatever to issue said alleged bonds or coupons or any of them, or any bonds or coupons whatever, and the same are and each and every of them is, and at all time- has been void, and does not constitute a legal, binding or valid obligation of said alleged or pretended irrigation district or any irrigation district, and the same, so issued or pretended or attempted to be issued, as alleged
114 in said complaint, were and each and every of them was issued without due or any process of law and in violation of the provisions of said act, and of the provisions of section 13 of article I of the constitution of California, and of articles V and XIV of the amendments of the Constitution of the United States, that no person shall be deprived of property without due process of law and *contra bonas mores*.

And further answering said complaint, intervenors allege:

I.

That a pretended election for the alleged and pretended purpose of determining whether or not bonds of said alleged and pretended district, in the sum of five hundred thousand dollars should be issued, was pretended and attempted to be held in said pretended irrigation district by order of certain persons claiming and pretending to be and acting as directors of said district, on the 7th day of June, 1890. Said election was declared by an order of said pretended board of directors to have been carried in favor of the issuance of bonds of said district in said sum of five hundred thousand dollars.

Thereafter, to wit, on the — day of June, 1890, said board of directors ordered that the bonds of said pretended district, in the sum of five hundred thousand dollars be issued in the manner and form prescribed by law, which order was then and there entered upon the minutes of said board and thereupon became and ever since has remained part of the records of said alleged board.

II.

Intervenors further allege on their information and belief, that at no time since the pretended organization of said alleged and pretended district, was a system of works or one mode of irrigation from a common source of supply ever established or located, nor was any common source of supply located or established for any irrigation system or system of irrigation works, by said pretended and alleged board of directors of said district, nor was any
115 system of irrigation ever established for or by said alleged and pretended district and no line of canals with the necessary branches therefor to irrigate the lands embraced within the said alleged and pretended district was ever fixed or determined upon by said pretended board or by any other person.

III.

Intervenors further allege on their information and belief that none of said five hundred thousand dollars of alleged bonds of said alleged district have been used in the purchase at the par value thereof of any lands, water rights or other property necessary for the construction, use, supply, maintenance, repair, improvement or betterment of canals or works or of lands for reservoirs for the storage of needful waters, nor have any of said alleged bonds been sold for ninety per cent. of the face value thereof, but said alleged and pretended board of directors of said alleged district have exchanged and disposed of said five hundred thousand dollars of said alleged bonds in the manner following, to wit:—

(a.) Said board of directors on or about the 1st day of January, 1891, exchanged $150,000 of the bonds of said alleged district, being 300 bonds of the denomination of five hundred dollars each, and number 1 to 300 inclusive, with the firm of J. Goldman & Co. for

forty-five thousand dollars in cash and a worthless water right on the St. John's river known as the Settler's ditch, and which water right from its location was wholly unavailable to irrigate any of the lands of said alleged district, and as part of the proceedings and for the purpose of making said exchange said board went through the form of advertising for bids for the bonds of said alleged district in the amount of fifty thousand dollars, for which bonds the said firm of J. Goldman & Co. bid ninety per cent. of the face or par value thereof, but said bid was made by said firm and accepted by said board with the understanding and agreement between said firm of J. Goldman & Co. and said board and as
116 part of the consideration for said bid, that said board of directors should purchase from said firm of J. Goldman & Co. the said water right known as Settler's ditch for the sum of one hundred thousand dollars, of the bonds of said alleged district:

(*b.*) That on or about the 15th day of April, 1892, the said board of directors exchanged one hundred and fifty thousand dollars of the bonds of said alleged district, being bonds numbered 419 to 719 inclusive, of the denomination of five hundred dollars each, for the canals, ditches and water rights claimed by the Kaweah Canal & Irrigation Company; that said board exchanged twenty thousand dollars of the bonds of said alleged district, being bonds numbered 719 to 758 inclusive, of the denomination of five hundred dollars each, for the ditches and canals claimed by the Rocky Ford Canal and Irrigation Company, which exchange was made at the same time said exchange was made for said Kaweah Canal & Irrigation Company.

That neither of said companies owned or possessed any water rights whatever at the time of said exchange, nor rights of way over the lands covered by any of the said canals or ditches; that said canals and ditches so purchased from the Kaweah Canal & Irrigation Company were not worth more than the sum of twenty thousand dollars, and the canals and ditches of said Rocky Ford Canal & Irrigation Company were not worth more than the sum of one thousand dollars, all of which was well known by the board of directors of said alleged district at the time of said exchanges.

(*c.*) That bonds numbered 387 to 397 inclusive, of the denomination of five hundred dollars each, were delivered to J. H. Woody and T. W. Maples on the 15th day of June, 1891, by said board of directors for labor on canals in said alleged district; that the debt for which the same was given in satisfaction was contracted for by said board of directors and said work was performed at a time
117 when there was no money in the treasury of said alleged district applicable to the payment therefor.

(*d.*) That bonds of said alleged district numbered 341 to 386 inclusive, of the denomination of five hundred dollars each were, on the 3rd day of June, 1891, hypothe*t*icated by the board of directors of said alleged district, to the Bank of Tulare*n* of the city of Tulare, in this county and State, to secure the payment of a note in the principal sum of $20,250 executed by the members of said

board of directors and divers other persons, which said note has been paid in full, and which bonds have not been returned to said district by said bank, nor have said bonds nor any portion thereof ever been sold by said alleged district.

(e.) That bonds numbered 301 to 340 inclusive, 397 to 418 inclusive and 759 to 1,000 inclusive, each of the denomination of five hundred dollars, were between the 4th day of June, 1891, and the 13th day of January, 1893, delivered to one R. Linder by said board of directors at the rate of ninety per cent of the face value of said bonds, in payment for labor on said canals and ditches.

IV.

Intervenors further allege that neither said Settler's ditch on said St. John's river nor the ditches nor canals of said Kaweah Canal & Irrigation Company, nor the ditches nor canals of said Rocky Ford Canal & Irrigation Company, nor any water thereof or flowing therein, or in any of said ditches or canals or any part or parcel of them was in anywise connected with any system of irrigation that has ever been devised or adopted for said pretended district by the alleged board of directors thereof; that no notice of intention to exchange any of said bonds so exchanged for ditches or water rights or rights of way was ever given or published by said alleged board of directors or any one else; and the said exchanges of said alleged bonds so made were illegal and void and without authority of law, and in violation of the provisions of said act of the legislature, approved March 7th, 1887.

V.

118 Intervenors further allege that no notice of intention to exchange any of said pretended bonds for work or labor done or to be done on said alleged canals or ditches, was ever given or published by said board of directors of said alleged district, or any one else, and said exchanges were each of them illegal and void and without authority of law and in violation of the express provisions of the aforesaid act of the legislature of the State of California.

VI.

Intervenors further allege that all the bonds so given or delivered or exchanged for — done for said district or for said canals, ditches and pretended water rights as hereinbefore alleged, were so taken and received at prices much less than the par value thereof; that the bonds so exchanged for labor were paid out and exchanged as aforesaid at the minimum price allowed by law for the sale thereof; that said bonds to the entire amount of five hundred thousand dollars of the par value thereof, as nearly as intervenors can ascertain the same, were so illegally exchanged and disposed of by said board as hereinbefore alleged; that all the work so done and performed upon the canals and works of said alleged district in exchange for said bonds was contracted for and so done and performed at a price therefor greatly in excess of the amount — would have been charged or received or paid therefor in cash,

and for which said work could have been procured to have been done for cash, and said board of directors well knew said facts at the time of making said contracts for work and said exchanges, and that said excessive prices so paid *was* agreed upon and adopted by said board of directors and the parties to whom said bonds were delivered for the purpose and with the intention of enabling said board so to exchange said bonds for said work and for said canals and ditches, and that said persons receiving said bonds would not have entered into any agreement with said district so made by them or any of them for performing said work in
119 exchange for bonds or in exchanging said canals or ditches or pretended water rights for said bonds, and would not have taken said bonds in payment or exchange for said work or ditches or pretended water rights except at a price much in excess of the reasonable price or value of said works and the cost for which said work could have been procured for cash, and in excess of a reasonable price or value for said canals, ditches and pretended water rights, and with a large discount from the par value of said bonds, and that said board of directors well knew said facts at the time of making said exchanges and each of them therefor; that for said reasons said alleged district and the owners of real property therein have been and are greatly damaged and injured thereby, and said exchanges of bonds as hereinbefore alleged were and the same are for said reasons, unlawful, unjust, oppressive and fraudulent, and against public policy and contrary to good morals, and in violation and in excess of the provisions of said act, and of the constitutional provisions hereinbefore referred to, and said board had no power, jurisdiction or authority to so dispose of said bonds or any of them.

VII.

Intervenors further allege that all the alleged bonds of said alleged district express upon their face that they were issued by authority of said act of March 7th, 1887, stating its title and deed of approval thereof, and in the sale, exchange or disposal of said bonds by said alleged district or board there was no warranty whatever of the validity thereof.

VIII.

Intervenors further allege that none of the lands in said alleged district as the same was organized is or ever has been arid or desert or of such character that it would not produce usual and ordinary crops of ordinary vegetables, grains, cereals, melons and other vegetables and fruits common to the climate thereof, or of other portions of the interior of said State or to agricultural lands elsewhere, without artificial irrigation, but that on the contrary said lands for
120 many years prior to the organization of said alleged district had been regularly cultivated and sown and planted with wheat, barley, alfalfa, orchards, vineyards, vegetables and other farm products and had heretofore produced, and ever since has produced, the usual fair and ordinary crops which should be produced upon the farm and agricultural lands; that said lands did not, nor

do the same now require artificial irrigation to make the same productive and profitable, and that for said reasons, there was not at the time of the organization of said alleged district any legal or other reason or necessity for the organization of said alleged district for the purpose of artificially irrigating the lands thereof, or of any of said lands or for the sale of the alleged bonds thereof.

IX.

For said reasons, and other reasons herein alleged, the organization of said alleged district, the pretended and attempted sale and exchange of the alleged bonds thereof, the levy and collection of assessments upon and against the lands of said district, and of the provisions of said act of the legislature of March 7th, 1887, so far as the same relate to said district, are and each of them is unconstitutional and void, and in violation of the provisions of articles V and XIV of the amendments to the Constitution of the United States, and of the provisions of section 13 of article I of the constitution of California, which provide that no person shall be deprived of property without due process of law, and in violation of the provisions of section 1 of article I of the constitution of California, that all men have certain inalienable rights, among which are those of acquiring, possessing and protecting property, and also in violation of article XIV of the amendments to the Constitution of the United States, that no State shall deny to any person within its jurisdiction the equal protection of the laws, and also in violation of the pro-
121 vision of the constitution aforesaid, that no private property shall be taken or damaged for public use without just compensation therefor.

X.

Intervenors further allege that a large portion of the land in said alleged district is not susceptible of irrigation and would not be benefitted but would be injured thereby, and the expense of preparing for irrigation such portions of said land as could be irrigated or benefitted by irrigation will be very large and dis-portionate to any benefit which could be received therefrom by the owners thereof.

XI.

For the foregoing reasons, the alleged system of irrigation provided for by said act and the board of directors of said district has been and is and will continue to be very unprofitable, burdensome and oppressive and the expense thereof wholly dis-portionate to the benefits which have been or ever will be received by owners of real property in said district and impracticable and destructive to the interests and welfare of said people.

XII.

Intervenors further allege that all the bonds of said district have been sold, exchanged and disposed of as hereinbefore alleged but no sufficient water supply or water rights have been obtained or

acquired by said district to irrigate more than one-fifth of the lands in said district in any one year, nor is there any available source of supply from which more water can be obtained; that the bonded indebtedness of said district, including the interest to grow due thereon if said bonds are valid, is nearly equal to the value of all the real property situate in said district.

XIII.

Intervenors further allege that upon the hearing of the petition for the organization of said Tulare irrigation district
122 before the board of supervisors of Tulare county, as hereinbefore set forth, said board of supervisors attempted to and did establish and define the boundaries of said proposed Tulare irrigation district, but that the boundaries so established and defined by said board of supervisors and as set forth in said order so establishing the same, comprised and embraced four separate and distinct bodies of land, not contiguous to each other, and which taken together did not and do not form one tract of land, and is not such a body of land as is contemplated or intended by said act of the legislature to be formed into or for an irrigation district, nor such a body of land as was petitioned to be organized into an irrigation district.

And said order of said board was spread upon the minutes of said board and thereby became and ever since has continued to be a public record of said board and said county of Tulare, and all persons were notified thereby of the proposed boundaries of said district.

And intervenors allege that by reason thereof, it never had and has not now any existence in fact as an irrigation district, and has never had and has not now any authority to create any indebtedness or to issue any evidences of indebtedness and never had any authority to issue any of the bonds or coupons mentioned in plaintiff's complaint, or to perform any of the functions of a duly organized irrigation district.

And that the act of said board of supervisors in so establishing the boundaries of said district so that it comprised four separate and distinct bodies of land not contiguous to each other, was without jurisdiction and is null and void; and the acts of the board of directors of said pretended Tulare irrigation district, in the issuance of the bonds hereinbeforev mentioned and in plaintiff's complaint set forth, was without authority or power so to do, and the same are null and void.

XIV.

123 Intervenors further allege that the provisions of said act of March 7th, 1887, in so far as the same conferred or attempted to confer upon boards of supervisors of counties in which a proposed district is situated, and especially the board of supervisors of the county of Tulare, State of California, power, jurisdiction or authority to hear the petition for the organization of the

proposed irrigation district, to establish and define such boundaries as so changed to include four separate and distinct bodies of land or otherwise, or to make an order dividing the proposed district into divisions, or to give notice of an election for the organization of such proposed district to be held therein, to hold or conduct such election*m* or to case the vote thereat, to declare certain persons elected to offices in such district, to cause a certified copy of any such orders to be recorded in the office of the county recorder in each county in which any portion of the lands of such district is situated, or authorizing or permitting such board or boards of supervisors to take said or any other proceedings for the organization of an irrigation district, under the provisions of said act, are and each of them is unconstitutional, and void, and in conflict with the provisions of section 1 of article III and section 1 of article IV of the constitution of California for the reason that said act and said provisions thereof confer or attempt to confer upon said boards of supervisors certain powers therein specified which can be legally exercised only by the legislature of the State, and in violation of the provisions of section 1 of article III of the constitution of California; and for the foregoing reasons, said alleged district has not and never has had any legal, valid or constitutional existance.

XV.

It is not intended by reason of any allegation or denial herein to concede or admit the legality of the organization of said alleged Tulare irrigation district, or the *de jure* or *de facto* existance
124 of any board of directors or any officers thereof, or of any bond thereof, or coupon attached thereto, at any time, or the validity of any act, bond or coupon mentioned herein or in plaintiff's complaint; but, on the contrary, expressly asserts and alleges that all and every thereof are and at all times have been wholly invalid, null and void, and imposed no obligations or liability upon the real property of said alleged district nor any of it, nor upon owners of property therein, or any of them.

And for a further and separate defense to plaintiff's complaint, intervenors allege that heretofore, to wit, on the 11th day of August, 1890, the persons pretending to be the board of directors of said pretended Tulare irrigation district, pursuant to the provisions of an act of the legislature of the State of California, approved March 16th, 1889, known as the confirmation act, filed in the superior court of the county of Tulare, State of California, a petition whereby said petitioners represented that said Tulare irrigation district was on or about the second day of September, 1889, duly organized as an irrigation district by the board of supervisors of said Tulare county under a*m* act of the legislature of the State of California, approved March 7th, 1887, and that ever since such organization it had claimed in good faith to be and had existed as an irrigation district.

That the first board of directors of said district was duly elected ur der the provisions of saidact; that — an election held on the 2nd day of April, 1890, J. W. Mackie, A. P. Merritt, W. B. Cartmill, E.

De Witt, and J. F. Gibson were elected members of the board of directors of said district, and at such time constituted such board of directors; that all the lands of said district were situated within Tulare county.

That the board of directors on or about the 12th day of May, 1890, estimated and determined the amount of money necessary to be raised by said district for the purpose of constructing the
125 canals and works necessary for the irrigation of the land of said district, and for water and water rights; and that said board estimated the sum of five hundred thousand dollars was necessary to be raised for said purposes, and determined that it was necessary that bonds of said district in the amount of said five hundred thousand dollars be issued and the same be sold in order to raise the money necessary for said purposes, provided the qualified electors should vote in favor of the issue of said bonds.

That said board called a special election at which should be submitted the question whether or not such bonds of said district should be issued in the amount so determined by said board; and that said election be held on the 7th day of June, 1890, and ordered that notices thereof be given by posting the same in each election precinct in each district, and also by publication in the "Weekly Tulare Register," that notices of said election were posted and published as ordered by said board; that such election was in fact held in said district and conducted in conformity with the provisions of said act and the returns from such election were filed in the office of said board of directors; and that on the 9th day of June, 1890, said boarde of directors canvassed such returns and ascertained therefrom and found and declared as the result of such election that 398 votes were cast at said election, and that 348 thereof were in favor of said issue of said bonds, and that 50 votes were cast against such issue of said bonds.

That said board caused the result of such election to be entered upon its minutes, and on the 1st day of July, 1890, ordered that the bonds of said district in said sum of five hundred thousand dollars be issued in the manner and form prescribed by law; that each of said bonds should be of the denomination of five hundred dollars, and should have attached thereto coupons for the instalments of the principal and for the semi-annual payment of the interest; that said bonds should be dated the same day and
126 should state the date of its maturity, and stating therein the form of said bonds and coupons for instalments of principal and coupon for interest, and that one thousand thereof be prepared, executed and issued in such manner and form; and that thereafter on the 6th day of August, 1890, said board of directors by its order declar*ing* its intention to sell said bonds in the amount of two hundred thousand dollars on the 17th day of November, 1890; that none of the said bonds had been sold, but that all of the same remained unsold and praying that the proceedings for the issue and sale of said bonds be judicially examined, approved and confirmed by said court; and which proceedings, was entitled "In the matter of Tulare irrigation district."

And thereafter, to wit on the — day of May, 1898, B. W. Jauchius, J. L. Gould, George C. Kelly, and Ralph Jones, by leave of court had, filed their answer to said petition, denying that said irrigation district was duly organized as an irrigation district by said board of supervisors, and denying that it had claimed in good faith or otherwise to be an irrigation district; and alleging that the petition presented to the board of supervisors of said Tulare county, for the formation of said district was not signed by fifty nor by a majority of the freeholders owning land in said pretended district.

That no notice of the time of the meeting at which said petition would be presented to said board of supervisors was ever given; that said board of supervisors, in violation of the express provisions of said act authorizing the formation of said district, changed the proposed boundaries so as to exclude fully thirty thousand acres of land susceptible of irrigation from the same system of works applicable to the other lands in said proposed district;

That upon the hearing of said petition, said board of supervisors defined the boundaries of such proposed district so that the same comprised and embraced four separate and distinct bodies of
127 land not contiguous to each other, and which was not such a body of land *b* as is contemplated or intended to be organized as an irrigation district; that said board of supervisors did not cause a copy of its order declaring the territory petitioned for organized as an irrigation district, to be filed for record in the office of the county recorder of Tulare county.

And denying that the board of directors of said district at any time, estimated or determined the amount of money necessary to be raised by said district for the purpose of constructing canals and works necessary for the irrigation of the lands of said district, or for acquiring water or water rights therefor.

And denying that said board at any time estimated that the sum of five hundred thousand dollars was necessary to be raised for such purpose; and alleging that at no time had the board of directors of said district estimated or determined the amount of money necessary to be raised by said district for the purposes of constructing canals and works necessary for the irrigation of the lands of said district, and for acquiring water and water rights therefor.

And alleging that at no time had its board of directors ever established or located or adopted any system of works for a mode of irrigation for the lands of said district from a common source of supply; and alleging that no plans or specifications for any system of irrigation or irrigation works were ever made whereby an estimate could be made by said board.

And alleging that said board of directors did not estimate that the sum of five hundred thousand dollars, or any other sum would be necessary to be raised for the purpose mentioned in said petition; and denying that said board of directors ever determined that it was necessary or proper that bonds of said district, to the amount of five hundred thousand dollars should be issued by said district or sold, in order to raise the amount of money necessary for said purposes.

128 And alleging that said board of directors did not at any time determine that it was necessary or proper that the bonds of said district in the sum of five hundred thousand dollars be issued or sold to raise the money necessary for the purpose of constructing canals and ditches.

And alleging that said *b* B. W. Jauchius, J. L. Gould, George C. Kelly, and Ralph Jones had been ever since the organization of said district, and were at the time of the filing of their answer therein, owners of real property within the boundaries of said district; and praying that the approval and confirmation of the proceedings had by said board of directors as aforesaid, and as alleged in said petition, be denied and that a decree be had adjudging said district illegally organized and void.

And thereafter such proceedings were had in said matter of Tulare Irrigation District, that on the 23rd day of November, 1898, there was entered therein the following order, to wit:

"In the Superior Court of the State of California in and for the County of Tulare.

"In the Matter of Tulare Irrigation District.

"This cause came on regularly for hearing by stipulation of the parties hereto and the order of the court before said court on the 17th day of June, 1898, said board of directors petitioners herein appearing by E. W. Holland, as its attorney, and the defendants, B. W. Jauchius, J. L. Gould, George C. Kelly and Ralph Jones, appearing herein by their attorneys C. L. Russell and G. W. Zartman; and the cause having been tried on said 17th day of June, 1898, by the court without a jury, and the testimony both oral and documentary, having been heard and the case having been submitted to the court for decision, and the court having made and filed its findings of fact and conclusions of law, and its order for judgment, entered in accordance therewith in favor of said defendant.

129 "Wherefore by reason of the law and the findings and order aforesaid it is ordered, adjudged and decreed:

"That the said Tulare irrigation district never was and is not now duly or legally organized by the directors of the board of supervisors of Tulare county on or about the second day of September, 1889, nor at any other time, and the same is not now a duly or legally organized irrigation district;

"That the first board of directors of said irrigation district were not duly or legally organized;

"That all the proceedings of said board of supervisors under and by virtue of which said irrigation district was organized and first board of directors of said district was elected are null and void, and approval of the same is hereby denied.

"And it is further ordered, adjudged and decreed:

"That all the proceedings had by or under the authority and direction of the board of directors of said Tulare irrigation district for the purpose of the issuance and sale of the bonds of said district

to the amount of $500,000.00 are null and void, and approval of the same is hereby denied.

"And it is further ordered, adjudged and decreed that the said Tulare irrigation district ever since its attempted organization on or about the second day of September, 1889, as aforesaid, has never been and is not now a legally organized irrigation district; that it has never possessed and does not now possess any power or authority to issue or sell bonds of said district, create indebtedness, or perform any of the functions, franchises, or other acts of an irrigation district.

"And it is further ordered that petitioners pay the costs herein.

"WHEATON A. GRAY,
"*Judge of the Superior Court.*

"Dated this November 23rd, 1898."

130 And for a further and separate defense to plaintiff's complaint, intervenors allege:—

I.

That at a regular meeting of the board of supervisors of the county of Tulare, on July 1st, 1889, a petition for the organization of said district was presented to said board of supervisors, praying that the said proposed Tulare irrigation district be organized under the provisions of the aforesaid act of March 7th, 1887, and acts amendatory thereof and supplemental thereto; that after hearing said petition, said board, on July 11th, 1889, made an order establishing and defining the boundaries of said proposed district and ordered an election to be held for the purpose of determining whether or not the same should be organized under the provisions of said act; which election was thereafter held on August 24th, 1889, and on September 2nd, 1889, said board declared said district duly organized within other boundaries than the boundaries established and defined by the aforesaid ordern of June 11th, 1889.

II.

That thereafter the board of directors of said district employed one P. J. Flinn and one John S. Urton, civil engineers to make surveys and estimates on the cost of constructing a system of irrigation for said district from the Kaweah river in said Tulare county; which surveys were thereafter made and the estimates of said engineers as made to said board of directors are contained in the reports of said engineers made to said board by said John S. Urton on October 29th, 1889, and by said P. J. Flinn, on May 6th, 1890, at which time it was ordered by said board of directors that two thousand copies of said reports and other information be published. That at a meeting of said board of directors of said district, held on the 8th day of May, 1890, it was ordered that it was the sense of said board that five hundred thousand dollars of the bonds of said district be issued;

131 that on the 12th day of May, 1890, the report of the special committee appointed to write up proceedings of the board

with reference to securing water was read and ordered adopted, and it was further ordered that the report of the commi-tee adopted and signed by the board this day be made part of and publis-ed with pamphlet containing Engineer Flinn's report, which report is contained in the printed pamphlet hereunto annexed and marked Exhibit "A" and expressly referred to and made a part hereof and which pamphlet also contains the report of said engineer Urton, and the report of said special committee; no part of which report is or ever have been on file with, or ever made part of the records of said district.

That no estimate of the amount of money necessary to be raised for the purpose of constructing any proposed system of irrigation for said district was ever made except as set forth in the report of said board contained in said Exhibit "A." That the action of said board of directors in determining that five hundred thousand dollars of bonds should be issued was not based upon any data, specifications, or estimates of any character whatever but said amount was a mere guess and was based exclusively upon the opinion of the members of said board of directors that said district would not at *at* that time vote in favor of the issuance of a greater amount of bonds and it never was the intention of said board of directors to construct a system of works on the lines proposed in said reports contained in said Exhibit "A," nor on any of said lines, nor has any system of works of said district ever been constructed on any of the lines proposed in said Exhibit "A."

III.

That on said 12th day of May, 1890, said board of directors ordered that an election be held to determine whether bonds in the amount of five hundred thousand dollars should be issued for the purpose of constructing the system of works designated in
132 said Engineer Flinn's report as Middle Level canal No. one, and from said 12th day of May, 1890, to the date of said election there *was* circulated by said board of directors among the voters of said district numerous copies of said report for the purpose of giving information to said voters of the plans to be pursued by said board in procuring an irrigation system for said district.

That said election was held on the 7th day of June, 1890, and a majority of the votes cast thereat were in favor of the issuance of said bonds, and said officers of said district have since gone through the form of issuing and delivering to pretended purchasers thereof, and exchanging for uncertain water rights the bonds of said district amounting to the total sum of five hundred thousand dollars which bonds are claimed to be outstanding bonds of said district.

And for a further and separate defense, intervenors allege that the said bonds and every part thereof, and the other coupons therein sued upon, are and each and every of them is barred by the provisions of subdivision 1 of section 338 of the Code of Civil Procedure; and that said bonds and every part thereof, and the other coupons

therein sued upon are and each and every of them is barred by the provisions of section 337 of the Code of Civil Procedure.

Wherefore, intervenors pray:

1. That they may be permitted to intervene herein and join in the defense of said action.

2. That plaintiff take nothing by this action.

3. That plaintiff be required by the judgment herein to deliver to the court all and singular the bonds mentioned in his complaint, and all coupons and instalments of principal attached thereto, and all other coupons mentioned in his complaint for cancellation, and that it be adjudged and decreed that the same are, and each and every of them is, illegal, unlawful, null and void, and that
133–202 the *said* be cancelled and destroyed and plaintiff be perpetually enjoined and restrained from transferring or circulating the same or asserting the same or any of them against said alleged district.

4. For their costs of suit herein.

5. For such other and further relief as may be meet in the premises.

C. L. RUSSELL,
G. W. ZARTMAN,
Attorneys for Intervenors.
JOHN GARBER,
GEORGE H. MAXWELL,
Of Counsel.

STATE OF CALIFORNIA } ss:
County of Tulare, }

B. W. Jauchius, being duly sworn, deposes and says: That he is one of the intervenors in the foregoing action; that he has heard read the foregoing complaint in intervention, and knows the contents thereof, and that the same is true of his own knowledge except as to those matters which are therein stated on information and belief, and that as to those matters he believes it to be true.

B. W. JAUCHIUS.

Subscribed and sworn to before me, this 28th day of September, 1899.

C. L. RUSSELL,
Notary Public in and for the County of Tulare, State of California.

[SEAL.]

(Ten-cent revenue stamp cancelled.)

203 In the Circuit Court of the United States, Ninth Circuit, in and for the Southern District of California.

ALFRED SHEPARD, Plaintiff,
v.
TULARE IRRIGATION DISTRICT, Defendant; GEORGE G. Kelly and B. W. Jauchius, Intervenors. } No. 859.

It is hereby stipulated and agreed that a jury in this action is waived, and that the issues of fact herein may be tried and determined by the court without the intervention of a jury.
Dated Oct. 17th, 1899.

S. F. LEIB,
Attorney for Plaintiff.
C. L. RUSSELL AND
G. W. ZARTMAN,
Attorneys for Defendant.
C. L. RUSSELL AND
G. W. ZARTMAN,
Attorneys for Intervenors.

GEO. H. MAXWELL,
JOHN GARBER,
Of Counsel for Defendants and Intervenors.

(Endorsed:) No. 859. U. S. circuit court ninth circuit, southern district of California. Alfred Shepard, plaintiff *v.* Tulare Irrigation District, defendant. George *C.* Kelly, *et al.*, intervenors. Stipulation waiving jury trial. Filed Oct. 17 1899, Wm. M. Van Dyke, clerk

204 (Endorsed:) No. 859. In the U. S. circuit court, southern district of California. Alfred Shepard, plaintiff, *vs.* Tulare Irrigation District, defendant. Complaint in intervention of B. W. Jauchius and Geo. G. Kelly. Filed Oct. 9 1899 Wm. M. Van Dyke, clerk G. W. Zartman, Calvin L. Russell Tulare, Cal. attorneys for intervenors. Geo. H. Maxwell, John Garber of counsel.

205 In the Circuit Court of the United States, in the Ninth Circuit, in and for the Southern District of California.

ALFRED SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT, a Corporation, Defendant. } No. 859.

This cause came on regularly for trial before the court, sitting without a jury, upon the issues joined herein, the plaintiff and intervenors herein having, by stipulation in writing signed by them and filed herein, stipulated that the allegations of the complaint in intervention herein should be deemed to be denied, and a jury having been expressly waived by stipulation in writing filed herein before the trial of this action, signed by the plaintiff and the defendant and the intervenors herein, the said cause was tried by the court upon the issues joined herein, and argued and submitted to

the court for decision. And the court being fully advised finds for the plaintiff on all the issues joined herein, and assesses the damages of plaintiff at the sum of thirteen thousand one hundred and eighty-five dollars, and finds that he is entitled to judgment against the Tulare Irrigation District for the said sum, and hereby orders that judgment be entered herein that plaintiff have and recover of and from said Tulare Irrigation District the said sum of thirteen thousand one hundred and eighty-five dollars.

Dated: March 30th, A. D. 1901.

OLIN WELLBORN,
United States District Judge.

206 (Endorsed:) No. 859. U. S. circuit court ninth circuit, southern district of California. Alfred Shepard, plaintiff, *vs.* Tulare Irrigation District, a corporation, defendant. Findings. Filed Mar. 30, 1901 Wm. M. Van Dyke, clerk.

207 In the Circuit Court of the United States, in the Ninth Circuit, in and for the Southern District of California.

ALFRED SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT, a Corporation, Defendant. } No. 859.

This cause coming on regularly for trial before the court sitting without a jury, upon the issues joined herein, the plaintiff and intervenors herein having by stipulation in writing signed by them and filed herein, stipulated that the allegations of the complaint in intervention herein should be deemed to be denied, and a jury having been expressly waived by a stipulation in writing filed herein before the trial of this action, signed by the plaintiff and the defendant and the intervenors herein, and the court having thereupon tried said action upon the issues joined herein, and the cause having been thereupon submitted to the court for decision, and the court having thereupon made its general findings in favor of the plaintiff and assessing his damages at the sum of thirteen thousand one hundred and eighty-five dollars, and ordered that judgment be entered herein that he have and recover of and from the said defendant Tulare Irrigation District the sum of thirteen thousand one hundred and eighty-five dollars,

Now, therefore, by reason of the finding and the order aforesaid, and of the law and the premises, it is hereby adjudged that plaintiff, Alfred Shepard do have and recover of and from the defendant Tulare Irrigation District, the sum of thirteen thousand one hundred and eighty-five dollars.

Judgment entered March 30th, 1901.

WM. M. VAN DYKE,
Clerk of the Circuit Court of the United States, Ninth Circuit, Southern District of California.

208 I, Wm. M. Van Dyke, clerk of the circuit court of the United States, for the southern district of California, do hereby certify the foregoing to be a full, true and correct copy of an original judgment made and entered by said court March 30th, 1901, in the cause entitled Alfred Shepard, plaintiff, *vs.* Tulare Irrigation District, a corporation, defendant, No. 859, and now remaining of record therein.

Attest my hand and the seal of said circuit court, this 30th day of March, A. D. 1901.

[SEAL.] WM. M. VAN DYKE, *Clerk.*

(Endorsed:) No. 859. United States circuit court ninth circuit, southern district of California. Alfred Shepard, plaintiff, *vs.* Tulare Irrigation District, defendant. Certified copy of judgment. Filed Mar. 30, 1901 Wm. M. Van Dyke, clerk.

209 In the Circuit Court of the United States, Ninth Judicial Circuit, in and for the Southern District of California.

ALFRED SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT, Defendant. } No. 859.

I, Wm. M. Van Dyke, clerk of the circuit court of the United States, for the ninth judicial circuit, southern district of California, do hereby certify that the foregoing papers hereto annexed constitute the judgment-roll in the above-entitled action.

Attest my hand and the seal of said circuit court, this 30th day of March, A. D. 1901.

[SEAL.] WM. M. VAN DYKE, *Clerk.*

(Endorsed:) No. 859. In the circuit court of the United States, ninth judicial circuit, for the southern district of California. Alfred Shepard, *vs.* Tulare Irrigation District. Judgment-roll. Filed Mar. 30th, 1901. Wm. M. Van Dyke, clerk. Recorded Judgment Register Book No. 1, page 425.

210 In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

ALFRED SHEPARD, Plaintiff,
v.
TULARE IRRIGATION DISTRICT (a Corporation), Defendant. } No. 859.

Opinion of the Court on Demurrer to Complaint.

Plaintiff, who is a citizen and resident of the State of Michigan, sues to recover upon interest coupons issued by the defendant, an irrigation district created under a statute of the State of California, known as the Wright irrigation act.

The plaintiff alleges the due organization of said district, the issuance of the bonds, to which said coupons were attached, and, that the plaintiff is a *bona fide* holder thereof.

Defendant has interposed a demurrer to the complaint, on the various grounds hereinafter noticed, and the present hearing is on said demurrer.

Said act, Statutes California, 1887, page 29 *et seq.*, contains, among others, the following provisions relating to bonds;

"SEC. 15. For the purpose of constructing necessary irrigating canals and works, and acquiring the necessary property and rights therefor, and otherwise carrying out the provisions of this act, the board of directors of any such district must, as soon after such district has been organized as may be practicable, and whenever thereafter the construction fund has been exhausted by expenditures herein authorized therefrom, and the board deem it necessary or expedient to raise additional money for said purposes, estimate and determine the amount of money necessary to be raised,
211 and shall immediately thereafter call a special election, at which shall be submitted to the electors of such district possessing the qualifications prescribed by this act, the question whether or not the bonds of said district in the amount as determined shall be issued. Notice of such election must be given by posting notices in three public places in each election precinct in said district for at least twenty days, and also by publication of such notice in some newspaper published in the county where the office of the board of directors of such district is required to be kept, once a week for at least three successive weeks. Such notices must specify the time of holding the election, the amount of bonds proposed to be issued; and said election must be held and the result thereof determined and declared in all respects as nearly as practicable in conformity with the provisions of this act governing the election of officers; provided, that no informalities in conducting such an election shall invalidate the same, if the election shall have been otherwise fairly conducted. At such election the ballots shall contain the words 'Bonds—yes,' or 'Bonds—no,' or words equivalent thereto. If a majority of the votes cast are 'Bonds—yes,' the board of directors shall cause bonds in said amount to be issued; if a majority of the votes cast at any bond election are 'Bonds—no,' the result of such election shall be so declared and entered of record. * * * The principal and interest shall be payable at the place designated therein." * * *

"SEC. 17. Said bonds, and the interest thereon, shall be paid by revenue derived from an annual assessment upon the real property of the district; and all the real property in the district shall be and remain liable to be assessed for such payments as hereinafter provided."

"SEC. 18. The assessor must, between the first Monday in March and the first Monday in June, in each year, assess all real
212 property in the district, to the persons who own, claim, have the possession, or control thereof, at its full cash value." * * *

"SEC. 22. The board of directors shall then levy an assessment sufficient to raise the annual interest on the outstanding bonds, and at the expiration of ten years after the issuing of bonds of any issue

must increase said assessment to an amount sufficient to raise a sum sufficient to pay the principal of the outstanding bonds as they mature. The secretary of the board must compute and enter in a separate column of the assessment book the respective sums, in dollars and cents, to be paid as an assessment on the property therein enumerated. When collected, the assessment shall be paid into the district treasury, and shall constitute a special fund, to be called the 'bond fund of —— irrigation district.' In case of the neglect or refusal of the board of directors to cause such assessment and levy to be made as in this act provided, then the assessment of property made by the county assessor and the State board of equalization shall be adopted, and shall be the basis of assessments for the district, and the board of supervisors of the county in which the office of the board of directors is situated shall cause an assessment-roll for said district to be prepared, and shall make the levy required by this act, in the same manner and with like effect as if the same had been made by said board of directors, and all expenses incident thereto shall be borne by such district. In case of the neglect or refusal of the collector or treasurer of the district to perform the duties imposed by law, then the tax collector and treasurer of the county in which the office of the board of directors is situated must, respectively, perform such duties, and shall be accountable therefor upon their official bonds as in other cases."

"SEC. 23. The assessment upon real property is a lien against the property assessed, from and after the first Monday in March 213 for any year; and such lien is not removed until the assessments are paid or the property sold for the payment thereof."

Sections 24 to 33 inclusive provide for the collection of assessments by the collector of the district and for the payment over to the treasurer of the district of all monies so collected.

In section 34 occurs the following provision: "Upon the presentation of the coupons due to the treasurer, he shall pay the same from said bond fund."

Defendant contends, that all the officers of said district, except as otherwise alleged in the complaint, are presumed to have regularly performed their duties, citing Civil Code of California, section 1963, subd. 15, and, that, inasmuch as the only dereliction of duty charged in said complaint is against the treasurer, it must be assumed, that the requisite assessments to pay the coupons sued on have been collected and placed in his hands for that purpose, and, therefore, that plaintiff has an adequate remedy by mandamus against the treasurer, available in the State courts, and, because of such remedy, cannot resort to an ordinary common-law action in the Federal courts.

This contention is fully met by the considerations, that in the Federal courts mandamus will not issue as an original, independent proceeding, but only in the exercise of a jurisdiction already acquired, (Bath *v.* Amy, 80 U. S. 244; Greene County *v.* Daniel, 102 U. S. 187; Davenport *v.* County of Dodge, 105 U. S. 237, Queensbury *v.* Culver, 86 U. S. 83; Heine *v.* Levy Commissioners, 86 U. S. 655; Waite *v.* City of Santa Cruz, 89 Fed. Rep. 619), and the present

action is to be regarded as one to establish the validity and amount of plaintiff's debt, (2 Dillon on Mun. Corp., sec. 856), an initiatory step to mandamus.

The case of Waite *v.* City of Santa Cruz, *supra*, cannot be distinguished from the case at bar, since the law providing for the payment of the bonds involved in the former case, (Statutes Cal. 1893, page 59), is the same in principle as sec. 17 of the Wright act
214 hereinbefore quoted, in other words, the bonds in both cases are payable out of special funds.

In Heine *v.* Levy Commissioners, *supra*, the Supreme Court of the United States says:

"The question thus presented by the present case is not a new one in this court. It has been decided in numerous cases, founded on the refusal to pay corporation bonds, that the appropriate proceeding was to sue at law and by a judgment of the court establish the validity of the claim and the amount due, and by the return of an ordinary execution ascertain that no property of the corporation could be found liable to such execution and sufficient to satisfy the judgment. Then, if the corporation had authority to levy and collect taxes for the payment of that debt, a mandamus would issue to compel them to raise by taxation the amount necessary to satisfy the debt."

In County of Greene *v.* Daniel, *supra*, the same high authority speaks as follows:

"In the State courts, under the rule as stated in Shinbone *v.* Randolph Co. (*supra*), and other cases, a mandamus would lie without reducing the coupons to judgment, to compel the commissioners' court to levy and collect the taxes necessary to pay what was due. The rule is different, however, in the courts of the United States, where such a writ can only be granted in aid of an existing jurisdiction. There a judgment at law on the coupons is necessary to support such a writ. The mandamus is in the nature of an execution to carry the judgment into effect. Bath Co. *v.* Amy, 13 Wall. 244; Graham *v.* Norton, 15 Wall. 427. A suit, therefore, to get judgment on the bonds or coupons is part of the necessary machinery which the courts of the United States must use in enforcing the claim, and the jurisdiction of those courts is not ousted simply because in the courts of the State a remedy may be afforded in another way."

To hold, that, because mandamus is available in the first instance in the State court, but not in the Federal court, therefore
215 plaintiff must sue in the former, would be to hold, in effect, that Federal jurisdiction can be ousted by State law, which, we know, is not the case. (Lincoln County *v.* Luning, 133 U. S. 529; Hyde *v.* Stone, 20 Howard 175; Suydam *v.* Broadnax, 14 Peters 67; Bank *v.* Jolly, 18 Howard, 503; Reagan *v.* Farmers' Loan and Trust Company, 154 U. S. 420.)

In Hyde *v.* Stone, 20 Howard, 175, the court says:

"But this court has repeatedly decided that the jurisdiction of the courts of the United States over controversies between citizens of different States cannot be impaired by the laws of the States which

prescribe the mode of redress in their courts, or which regulate the distribution of their judicial power. In many cases State laws form a rule of decision for the courts of the United States, and the forms of proceeding in these courts have been assimilated to those of the States, either by legislative enactment or by their own rules. But the courts of the United States are bound to proceed to judgment and to afford redress to suitors before them, in every case to which their jurisdiction extends. They cannot abdicate their authority or duty in any case in favor of another jurisdiction. Suydam *v.* Broadnax, 14 Pet. 67; Union Bank *v.* Jolly, adm'r, 18 How. 503."

Defendant also reaches the conclusion, that mandamus is plaintiff's sole remedy by another line of reasoning, namely: that defendant's obligation is not a general obligation to pay, but only a special obligation to levy, collect and disburse the annual assessments provided for in the foregoing sections of the Wright act, and, therefore, a common-law judgment, with the ordinary writ of execution, would subject the defendant to a more burdensome liability that its contract imposes.

This argument, whatever may be the character or scope of defendant's obligation, is fully answered by what I have just said as to the Federal procedure on mandamus, and the further consideration, that a judgment, if obtained in the present action, will not enlarge or change said obligation, so far as concerns the fund
216 out of which it is payable. (United States *v.* County of Macon, 99 U. S. 592; Higgins *v.* San Diego Water Co., 118 Cal. 554; Buck *v.* Eureka, 119 Cal. 46.)

Another contention of defendant, kindred to those already noticed, is, that the coupons sued on are payable out of a special fund, and, that the complaint is bad, because of its failure to allege, that there is money in that fund sufficient to pay said coupons, citing among others, the case of Travellers' Insurance Co. *v.* City of Denver, 18 Pac. Rep. 558.

The principle of that case, doubtless, is, that the primary obligation of the city was to create a fund, and, therefore, unless the fund was in existence, plaintiff had no remedy except to compel the officers of the corporation to perform their duties and create the fund. The court says:

"The city having contracted to take certain steps to create a proper fund for the payment of the cost of constructing the sewer, and a party contracting to do the work having contracted that payment therefor should be made out of the fund so to be created, it is evident that the city is not liable, in an action upon warrants drawn on that fund, without a showing that there is money in the fund to pay the same. The primary liability of the city is upon its contract to create a fund. Bill *v.* City of Denver, 29 Fed. 344."

In the last-named case, defendant's contention is stated thus:

"It is insisted, on the part of the city, that its sole liability was the making of an assessment and levy upon this sewer district, and that, if it has failed to discharge that duty, the plaintiff's sole

remedy is by mandamus proceedings to compel it to proceed therewith."

If it be conceded, which, however, I do not decide, that the last sentence above quoted from Travellers' Ins. Co. *v.* City of Denver, namely, "The primary liability of the city is upon its con-
217 tract to create a fund," aptly characterizes the liability of the defendant herein, still the doctrine of that case, applicable where mandamus issues as an original, independent proceeding, cannot defeat the present action for the reason already stated, that, under Federal practice, said action is prerequisite to a writ of mandate.

Defendant further contends, that the complaint should have alleged a demand upon the treasurer of the county.

Such a demand, I think, was unnecessary, in view of the facts, that the law expressly requires and the bonds stipulate in terms for payment of the coupons at the office of the treasurer of the district.

Defendant further contends, that the present action cannot be maintained, because the plaintiff, should he recover judgment herein, would not then be entitled to a writ of mandate. This contention, it seems to me, is without merit. As well might recovery on a promissory note, admittedly executed by a defendant, be resisted, on the ground, that he is insolvent, and, therefore, judgment against him would be ineffectual. Plaintiff's counsel suggests, with much force, that section 14 of the judiciary act of 1789, partially embodied in Revised Statutes U. S. sec. 716, and which, as construed by the Supreme Court in Booth *v.* Amy, *supra*, and the other cases cited in same connection, authorizes mandamus only when ancillary to a jurisdiction already acquired, is similar in principle to the rule of equity practice, which requires a creditor, who desires to attack a conveyance for fraud, to first reduce his claim to judgment, citing Kent *v.* Curtis, 4 Mo. App. 121; Estes *v.* Wilcox, 67 N. Y. 266; Cates *v.* Allen, 149 U. S. 768. Whether or not under the circumstances of this case, the officers of the district are compellable to raise a fund, with which to pay off plaintiff's coupons, is a question to be determined after the plaintiff shall have obtained, if he does obtain, the judgment he seeks in this action.

218 With reference to the other objections to the complaint, that it fails to show legal notice of the election for the issuance of the bonds, and which of the bonds were exchanged for water rights and other properties, and which were sold for cash, it is only necessary to say that the complaint alleges, that the plaintiff is a *bona fide* holder of the coupons, and, that the bonds recite their issuance in conformity to law. (Lincoln *v.* Iron County, 103 U. S., 412; P. L. & T. Co. *v.* Mercer Co. 170 U. S. 593; 15 Am. & Eng. Ency. of Law, 1265; Town of East Lincoln *v.* Davenport, 95 U. S. 801; Town of Grand Chute *v.* Winnegar, 82 U. S. 355; County of Mercer *v.* Hackett, 68 U. S. 93; Brooklyn *v.* Ætna Life Insurance Co., 98 U. S. 262; Bernard's Township *v.* Morrison, 133 U. S. 523.)

Demurrer overruled.

OLIN WELLBORN, *Judge.*

(Endorsed:) No. 859. U. S. circuit court, southern district of California. Alfred Shepard *vs.* Tulare Irrigation District (a corporation) Opinion on demurrer. Filed Apr. 24 1899 Wm. M. Van Dyke, clerk, by E. H. Owen deputy

219 In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

ALFRED SHEPARD, Plaintiff,
v.
TULARE IRRIGATION DISTRICT, a Corporation, Defendant. } No. 859.

Conclusions of the Court on Final Hearing.

The views announced by me in Miller *v.* Perris Irrigation District, 99 Fed. Rep. 143, are reaffirmed.

Defendant's and intervenors' objections to the testimony by plaintiff are overruled, while the plaintiff's objections to the testimony offered by the defendant and intervenors are sustained.

The contention of the defendant and intervenors, in their brief filed June 8th, 1900, that the bonds to which the coupons sued on were attached, are void, because of alleged illegalities in date and form, is, in my opinion, without merit.

Judgment will be entered for plaintiff, and plaintiff's attorney will prepare and submit to the court findings in accordance with these conclusions.

OLIN WELLBORN, *Judge.*

(Endorsed:) No. 859. U. S. circuit court, southern district of California. Alfred Shepard *vs.* Tulare Irrigation District. Filed Mar. 25 1901. Wm. M. Van Dyke, clerk.

220 At a stated term, to wit, the January term, A. D., 1901, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, southern division, held at the court-room in the city of Los Angeles on Thursday the twenty-fifth day of April, in the year of our Lord one thousand nine hundred and one.

Present: The Honorable Olin Wellborn, district judge.

ALFRED SHEPARD, Complainant,
vs.
TULARE IRRIGATION DISTRICT, Defendant; GEORGE G. Kelly and B. W. Jauchius, Intervenors. } No. 859.

In the above-entitled cause the defendant and intervenors in due time having served and filed their notice of intervention to move the court for a new trial of said cause upon the following grounds: 1. Insufficiency of the evidence to justify the findings and decision herein. 2. Errors in law occurring at the trial and excepted to by said defendant and intervenors,—stating in said notice that said motion would be made on the minutes of the court, and the plead-

ings and the proceedings on file in the clerk's office, and that on said grounds, minutes, pleadings and proceedings the said defendant and intervenors moved the court to set aside and vacate the decision and findings hereinbefore made, and to grant a new trial of this action, and, pending said motion, defendant and intervenors having duly moved the court to set aside and vacate the said findings and to make and enter findings in favor of the defendant, on the ground that there was no evidence whatever, to justify the findings aforesaid in favor of the plaintiff, and that on all the evidence in the cause findings should be made in favor of the defendant and intervenors; and pursuant to the stipulation and con-
221 sent of counsel for the respective parties, said motion having been called up on this 25th day of April, 1901, being a day in the January term, A. D. 1901, of said circuit court, and having been submitted to the court on behalf of defendant and intervenors, for the consideration and decision of the court,—it is now by the court ordered that said motion be, and the same hereby is denied, to which ruling defendant and intervenors each and severally and respectively now duly except.

222 In the Circuit Court of the United States in and for the Ninth Circuit, Southern District of California.

ALFRED SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT, Defendant; GEORGE G. KELLY and B. W. Jauchius, Intervenors.

Bill of Exceptions.

Be it remembered, that the above-entitled action coming on regularly for trial upon the 13th day of April, A. D. 1900, in the above-entitled court, before the court sitting without a jury, a jury trial having been by the parties duly waived by a stipulation in writing, in the words and figures following: "A jury trial in the above-entitled action is hereby waived," signed by the attorneys for the respective parties and duly filed with the clerk prior to the commencement of the trial; S. F. Leib, Esq., appearing as attorney for the plaintiff, and C. L. Russell and G. W. Zartman, appearing as attorneys for said intervenors, and R. M. F. Soto, George Maxwell, John Garber and C. L. Russell, and G. W. Zartman, appearing as attorneys for said defendant. The following proceedings were had, evidence received, rulings made, and exceptions taken.

There was produced to the court a written stipulation duly made and signed by the respective attorneys herein for both parties, plaintiff, defendant and intervenors, and filed herein on the 29th day of March, 1900, and it was thereupon agreed by all the parties that said stipulation had been so made as aforesaid, and that said stipulation was and is in the words and figures following, to wit.

223 In the Circuit Court of the United States, Ninth *District* in and for the Southern District of California.

ALFRED SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT, Defendant.

It is hereby stipulated by all parties hereto that the following are facts, and on the trial of this action they, or any of them, may be offered in evidence as facts by any party to this action; and when so offered, the party not offering the same may object to such facts, or any of them, being admitted in evidence, upon legal grounds which may exist against their admissibility.

1st.

The plaintiff is and for ten years and more last past has been a citizen of and residing in the State of Michigan, in the United States of America, and at all such times has been and yet is a non-resident of the State of California, and has not at any time been a resident or citizen of the State of California, or residing therein. And David Shepard, and F. G. Shepard, are, and for ten years last past have also been residents and citizens of and residing in said State of Michigan.

2nd.

That under the provisions of an act of the legislature of the State of California, entitled: "An act to provide for the organization and government of irrigation districts, and to provide for the acquisition of water and other property, and for the distribution of water for irrigation purposes." Approved March 7th, 1887, an effort was made in the county of Tulare, State of California, to form an irrigation district known as Tulare irrigation district,
224 and such proceedings in that behalf were had, that what purported to be a certified copy of an order of said board of supervisors was duly filed with the county recorder of said county on the 14th day of September, 1889, a certified copy of which certified copy is hereunto annexed marked "A." The persons declared by said order of the board of supervisors to have been elected as officers of said district immediately thereafter purporting to organize as such officers and thereupon entered upon their duties as such officers the same as though said district had been legally organized, and as though they had been legally elected such officers, and they and their successors in office have ever since continued to act as such officers and to maintain the name of "Tulare irrigation district," and in its name have caused the defendant to act as though it was in every respect legally organized as an irrigation district under said act of the legislature, and in that behalf has at all such times had the name "Tulare irrigation district" printed upon a sign above a door in front of an office in which the archives and papers of said defendant are kept; and its board of directors have met from time to time in such room from the time of such purported organization thereof until the present, weekly and sometimes

oftener, averaging twice a month, and in the year 1891, 1892, 1893, its board of directors purported to issue bonds of such Tulare irrigation district in the sum of $500,000, being 1,000 bonds of the face value of $500 each, as hereinafter stated, and levied assessments on the property claimed to be embraced in said district, purporting to act in so doing under the said act of the legislature, and previous to July 1st, 1896, it assessed, levied and collected taxes upon the lands claimed to be in such district of over $100,000, and paid the same out as interest upon such bonds; that it has engaged in litigation as plaintiff in — suits, — of them, before the issuance of said bonds, and therein alleged that it was a corporation under the pro-
225 visions of the said act of the legislature, and from said time of its said purported organization until the present time, whatever it has done and performed, it has done and performed in the same manner as if it had been legally organized as such district in full compliance with the law, and so continues to act and hold itself out as such corporation organized under said law.

3rd.

That all lands embraced in the limits of said district are and always have been in the said county of Tulare.

4th.

That after certain proceedings had been had by the board of directors of said defendant, the said defendant called a special election of the electors of said district at which should be submitted to such electors possessing the qualifications prescribed by such act of the legislature, whether or not bonds of such district should be issued in the amount of said $500,000; said election being called for the 7th day of June, 1890; that at said election there were cast 398 votes of the electors of said district of which 348 voters voted for such proposed bonds, and fifty voters voted against the same; and thereupon and on or about July 1st, 1890 the said board of directors of said district ordered that the bonds of said district in the sum of $500,000 divided into 1,000 bonds of $500 each and numbered consecutively from one to one thousand be issued by said district, and that said bonds and the coupons thereto annexed be in the form as alleged in the complaint in this action.

5th.

Thereupon the directors of said district caused what purported to be one thousand bonds of said district to be printed, and each of them, together with the coupons thereto attached were in the
226 form as alleged in the complaint in this action, and all of them were of precisely like tenor and form, and were signed by the president and secretary of said defendant and the seal of the board of directors of said defendant was affixed to each of said bonds, and all of said bonds were so signed and sealed before being issued. A copy of one of said bonds numbered 400 is annexed to the complaint in this action marked "Exhibit A." That coupons for the payment of interest of said bonds were attached

thereto and signed by the secretary of said defendant, and each coupon had on the upper right-hand corner thereof and on the back thereof, the number of the installment of interest for which said coupons was given, and had on the lower left-hand corner thereof the number of the bond to which it was attached and all of the coupons of each of the other of said bonds save as to the number placed thereon of the bonds to which they were attached and each of said coupons for interest on said bonds were precisely of the same tenor and form as each of the other coupon for interest on said bonds, save as to the amount of the interest for which it was given and save as to the said number placed thereon to show the installment of interest for which said coupon was given, and all of said coupons were so signed and numbered before the issuance of any of said bonds. That a copy of one of said coupons, to wit: the one attached to bond number 400 given of the twelfth instalment of interest is attached to said complaint marked "Exhibit B."

6th.

That said bonds were precisely and consecutively numbered one to one thousand inclusive and were all disposed of by the said board of directors of said defendant during the years 1891, 1892 and 1893.

7th.

That as a result of the disposition of such bonds as aforesaid the defendant was enabled to and did build and construct a system of canals, ditches and laterals by and through which lands in such district varying from many thousands of acres in the wet year of 1893 to only a few hundred acres in the dry years of 1898 and 1899 were irrigated.

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8th.

That the treasurer of said district promptly paid the interest coupons on each of said bonds every six months as such coupons fell due, from the time the said bonds were disposed of by said directors as aforesaid until July 1st, 1896.

9th.

That no one ever brought any suit or action to prevent the issuance of any of said bonds.

10th.

That no suit or action was ever brought to annul or cancel or have declared void any of said bonds until after the year 1896, nor was any suit or action ever brought until after the year 1895 wherein the validity of any of said bonds was in any way questioned, nor until after the year 1896, wherein the validity of any of said bonds 342 to 386 inclusive *were* in any way questioned except as to the constitutionality of the said act of the said legislature of March 7th, 1887, which action involving such constitutionality of such law was brought in November, A. D., 1895.

11th.

That the plaintiff at the commencement of this action was the holder of the coupons which are alleged in the complaint herein to be held and owned by him and on which this action is brought and is the owner thereof as against any of the other persons or corporations hereinafter mentioned. That said coupons were all, at the time of the printing said bonds numbered respectively from one to one thousand as aforesaid respectively attached to and a part of said bonds bearing their respective numbers.

12th.

That plaintiff becomes the holder of such coupons on which he has brought this action as follows:

In the first part of the year 1892 one Wesley A. Jacobs sold and delivered to the following persons the following of said one thousand bonds for (and then received from them therefor) the
228 price of ninety cents on the dollar for the face value of said bonds, to wit: Bonds numbered 625, 626, 823 to 831 inclusive, 313, 389 to 396 inclusive, 634 to 636 inclusive, to Alfred Shepard, the plaintiff herein.

Bonds numbered 832 to 840 inclusive, 310 to 312 inclusive to David Shepard.

Bonds numbered 814 to 822 inclusive, 598, 579, 583, 436, 437, 438, 616 to F. G. Shepard. Bonds 434 and 435 to Mary A. Chaffin.

On January 13th, 1892, R. Linder sold and delivered to F. G. Shepard the following of said one thousand bonds for (and then received from said F. G. Shepard therefor) the price of eighty-five cents on the dollar of the face value of said bonds to it, bonds numbered 722, 723, 724, 938 to 941 inclusive, 961, 962, 982 to 1000 inclusive, 720, 721, 725, 728, 746 to 749 inclusive, 934 to 937 inclusive, 314, 433, 589 to 602 inclusive, 719. On March 10th, 1893, F. G. Shepard sold and delivered to Alfred Shepard the plaintiff herein the following of said one thousand bonds for (and then received from said Alfred Shepard therefor) the price of eighty-six cents on the dollar of the face value of said bonds, to wit: bonds numbered 720, 721, 725, 728, 746 to 749 inclusive, 934 to 937 inclusive.

On March 10th, 1893, F. G. Shepard sold and delivered to David Shepard the following of said one thousand bonds for (and then received from Dsaid David Shepard therefor) the price of eighty-six cents on the dollar of the face value of said bonds, to wit: bonds numbered 314, 433, 589, to 602 inclusive, 719.

The said prices so paid to said Wesley A. Jacobs for the said bonds so purchased from him and the said prices so paid to said R. Linder for said bonds so purchased from him and the said prices so paid to said F. G. Shepard for the said bonds so purchased from him were the full value of said bonds so purchased at the time they were so purchased and each of said purchasers so pur-
229 chasing the same did so purchase the same in good faith for full value in the usual course of business without any actual

notice or knowledge of any defect, infirmity or invalidity of said bonds or any of them and without any actual notice or knowledge of the non-performance or non-observance of any requirements of the law necessary to their validity but so purchased the same under the full belief that all requirements of the law necessary to their validity had been performed and observed and complied with.

In December, 1896, said David Spehard gave, transferred and delivered to his two sons, Alfred Shepard and F. G. Shepard all of said bonds theretofore purchased by him as aforesaid, to wit: To Alfred Shepard bonds numbered 832, 834, 836, 838, 840, 311, to 314, inclusive, 433, and 589, 591, 593, 595, 597, 599, 601, 603; to F. G. Shepard bonds numbered 310, 312, 833, 835, 837, 839, 315, 588, 590, 592, 594, 596, 598, 600, 602, 719.

In the year 1897, Laura A. Chaffin died, and in that year said one thousand bonds numbered 434 and 435 were distributed as a part of her estate to her two daughters Fannie L. Shepard, and Mary A. Chaffin, to wit: bond numbered 434 to Fannie L. Shepard and bond numbered 435 to Mary A. Chaffin.

In the year 1898 and before the first day of October of that year the interest coupons on said bonds were assigned, transferred and delivered to Alfred Shepard the plaintiff herein by the following parties as follows, to wit:

By Fannie L. Shepard and Mary A. Chaffin the interest coupons numbered 12 to 16 inclusive taken from said bonds numbered 434 and 435 and said plaintiff has ever since been the owner and holder thereof.

By F. G. Shepard the interest coupons numbered 12 to 16, inclusive taken from said bond- numbered 312, 315, 436, 437, 438, 562, 578, 589, 586, 588, 590, 592, 594, 596, 598, 600, 602, 607, 608, 616, 627, 628, 637, 638, 639, 712, 722, 723, 724, 814 to 822 inclusive, 833, 835, 837, 839, 838, to 941 inclusive, 961, 962, 982, to 1000 in-
230 clusive, excepting coupon numbered 12 taken from said bond- numbered 982 to 988 inclusive, and plaintiff has ever since been the owner and holder thereof.

On December 17th, 1892, R. Linder sold and delivered to the San Jose Safe Deposit Bank of Savings, a corporation, having its principal place of business in San Jose, California, the following of said one thousand bonds for (and then received from said bank therefor) the price of eighty-six and one-fourth cents on the dollar of the face value of said bonds, to wit, bonds numbered 942, 943, 948 to 952 inclusive, 959, 978, to 981 inclusive.

That previous to said purchase and in the year 1892 the said R. Linder borrowed from said San Jose Safe Deposit Bank of Savings the sum of fifty-five thousand dollars upon the collateral security of, and then giving and delivering to said bank as collateral security to secure the payment of said indebtedness the following of said one thousand bonds, to wit: bonds 398 to 418 inclusive, 432, 439 to 452 inclusive, 455 to 468 inclusive, 548, 734, 735, 759, to 813 inclusive, 841 to 916 inclusive, being one hundred bonds pledged to secure the payment of said indebtedness. That at the time of borrowing

said $55,000 said Linder gave said bank his promissory notes to evidence the same, and also his written pledge of said one hundred bonds to secure the payment thereof.

That said indebtedness became due and was unpaid, whereupon said bank on February 11th, 1898 filed its complaint against said Linder for a sale of said pledged bonds and such proceedings were regularly had in such action that on June 25th, 1898 said bank obtained a valid decree in said action against said Linder adjudging that there was then due and unpaid from said Linder for and upon said indebtedness the sum of sixty-seven thousand four hundred and thirty-five dollars, and further adjudging that the payment of the same was secured by said pledge of said one hundred
231 bonds, and ordered, — adjudged that said bonds be sold at public sale for the payment of said indebtedness, and that said bank might become a purchaser at said sale. That thereafter, and on July 22nd, 1898, said bonds were offered at public sale, as provided in said decree, by the commissioner appointed and named by the court in said decree for that purpose; and thereupon, said bank bid the full amount of its said judgment, to wit: the sum of sixty-seven thousand four hundred and thirty-five dollars. That such bid was the highest bid made at said sale for such bonds, and thereupon, the same were sold by such commissioner to said bank for said sum, and said commissioner thereupon executed and delivered to said bank a bill of sale of said bonds, in pursuance of said sale, under said decree, and reciting the same as his authority for making said sale. That at the time of filing said complaint, and at all times thereafter, until and including July 22nd, 1898, said Linder was utterly and entirely insolvent, and without any property whatever.

That said bank bought said twelve bonds, so bought by it, for 86½ cents on the dollar, of the face value thereof, as aforesaid, in good faith, for full value, in the usual course of business, without any actual notice or knowledge of any defect, infirmity or invalidity of such bonds, or any of them, and without any actual notice or knowledge of the non-performance or non-observance of any requirements of the law, necessary to their validity, but so purchased the same under the full belief that all requirements of the law necessary to their validity, had been performed and complied with.

That said bank would not have loaned any of said money to said Linder except upon security, and it loaned said money upon and took said one hundred bonds so pledged to it, as a pledge to secure said loans of said $55,000, as aforesaid, in good faith, in the usual course of business, without any actual notice or knowledge of any defect, infirmity or invalidity of such bonds, or any of them,
232 and without any actual notice or knowledge of the non-performance or non-observance of any requirement of the law necessary to their validity, but so loaned said money and took the said bonds, in pledge, as aforesaid, under the full belief that all requirements of the law, necessary to the validity of said bonds, had been performed and observed and complied with.

After July 22nd, 1898, and before October 1st, 1898, said bank assigned, transferred and delivered to Alfred Shepard, the plaintiff

herein, the interest coupons upon said bonds, so acquired by it, as follows, viz: The interest coupons numbered 12, taken from said bonds numbered 398 to 418 inclusive, 439 to 453 inclusive, 455 to 468 inclusive, 759 to 766 inclusive, 768 to 785 inclusive, 787 to 800 inclusive, 846, 858, 902, 913, 915, 942, 943, 948 to 952 inclusive, 959, 978 to 981 inclusive, and the interest coupon number 13 taken from said bonds numbered 432, 548, 734, 735, 767, 786, 801, 803 to 806 inclusive, 841 to 845 inclusive, 847 to 857, inclusive, 859 to 901, inclusive, 903 to 912 inclusive, 914, 916, and said plaintiff has ever since been the owner and holder thereof.

That prior to June, 1891, the board of directors of Tulare irrigation district had advertised for bids for a certain portion of its bonds, in conformity with the requirements of the said act of the legislature of the State of California. In answer to such advertisement, a bid was received from W. A. Ray for the purchase of a designated portion of such bonds at ninety cents on the dollar. Such bid was accepted by such board, and the sale of such portion of such bonds including those numbered 342 to 386 inclusive, was awarded by said board of directors to him. Thereafter, and before said Ray had paid for and taken such bonds, he being unable to pay for the same, and being unable to get any one else to take them off his hands, the said district was greatly in need of money to the extent of $20,000, in carrying on the construction of its works, and its directors sought to borrow such amount from the Bank of Tulare, a corporation, having its principal place of business in the city of Tulare, where the said district had its offices, said directors offering at the same time to furnish the note of twenty-five of the tax-payers of said district, to secure the payment of said loan, and to pledge as many of its unissued bonds as
233 might be required by said bank, to secure the payment of said loan. The said bank thereupon consulted its attorney and was advised by him that the district had no power to either borrow money or to pledge its bonds, of which advice said directors were then informed by said bank. Said bank, however, at the same time stated, that it would loan said money to the signers of such a note, and that the same could be secured by a pledge of forty-five of the said one thousand bonds of said district, if such bonds were pledged by a *bona fide* purchaser thereof. Thereupon, said W. A. Ray gave an order to said district to deliver said Linder forty-five of said bonds, the purchase of which had theretofore been awarded, as aforesaid, to said Ray upon said Linder paying said district for the same, at the rate of ninety cents on the dollar, and thereupon a note to such bank for such amount, was signed by twenty-five tax-payers of such district, including five persons who at that time were the directors of such district, and also by R. Linder and attached to said note was what purported to be a written pledge of forty-five of such one thousand bonds, numbered 342 to 386 inclusive, signed by said R. Linder, and said five persons who were then such directors, but said note did not purport to be the note of said district nor of said directors as such, nor did said pledge purport to be made or signed by said district nor by said directors

as such, but said note and said pledge purported to be simply the note and pledge of the persons so signing the same, as private individuals. Thereupon, and with the consent of said Linder and for the purpose of making and cotemporaneously, said note and pledge was delivered to said bank, together with said bonds, the secretary of said district handing said bonds to said bank, on the verbal order of said Linder, whereupon the said bank on the verbal order of said Linder, paid said money to said district, where it was at once put in the construction fund of said district and within a few days thereafter, it was used and paid out by said district
234 on warrants drawn by the board of directors thereof, the secretary of said district at the same time, or within a few months thereafter, entered on the register of sale of the bonds of said district that said bonds were sold to said R. Linder on the order of said W. A. Roy.

At the time of such transaction, it was agreed by the said directors, that inasmuch as the said note was to bear interest at the rate of twelve per cent. per annum, (which was the current rate in that locality at that time) and the bonds pledged were only bearing interest at the rate of six per cent. per annum, the district, until said note was paid would, in the meantime, pay the difference of interest between the rate designated in said note and the rate designated in said bonds. This, the district continued to do until the said bank took a written assignment of said forty-five bonds, signed by the same parties who signed the said pledge, in full payment of said note, whereupon, said bank surrendered said note to the signers thereof as fully paid. This was in November, 1896. Said district also during all such time, regularly paid to said bank the interest coupons upon said forty-five bonds, as they fell due. No payment of any part of the principal of said note has ever been paid or tendered, except as above stated. The said Bank of Tulare has been in possession of said forty-five bonds from June the 3rd, 1891 to the present time.

That said bank bought said forty-five bonds and took said assignment thereof, in November A. D., 1896, as aforesaid, in good faith, in the usual course of business, without any actual notice or knowledge of any defect, infirmity or invalidity of such bonds, or any of them, and without any actual notice or knowledge of the non-performance or non-observance of any requirement of the law necessary to their validity, but so purchased the same under the full belief that all the requirements of the law, necessary to their validity had been performed and observed and complied with.

235 That said bank loaned said twenty thousand dollars upon said note and bonds, and took said bonds so pledged to it, as a pledge to secure said loan as aforesaid, in good faith, in the usual course of business, without any actual notice or knowledge of any defect, infirmity or invalidity of such bonds, or any of them, and without any actual notice or knowledge of the non-performance or non-observance of any requirement of the law, necessary to their validity, but so took the same in pledge under the full belief that all the re-

quirements of the law necessary to their validity, had been performed, obs-rved and complied with.

That said bonds never were of a greater value than ninety cents on the dollar, of their face value.

That in the year 1898, and prior to the 1st day of October thereof, the said Bank of Tulare assigned, transferred and delivered to Alfred Shepard, the plaintiff herein, the interest coupons numbered 16, on said bonds numbered 342 to 356 inclusive, and said plaintiff has ever since been the holder and owner thereof.

That in the years 1892, 1893 and 1894, or in some of those years, E. Lathrop, bought of said one thousand bonds in the open market, from parties who had them in possession, apparently as owners, bonds numbered 476, 478, 490, 491 and 492, at the then current prices for which said bonds were then sold, but of whom he bought these bonds he cannot now remember or state, as he bought and sold other of said one thousand bonds at about the same rate; that he bought said bonds 476, 478, 490, 491 and 492, as aforesaid, in good faith, for full value, in the usual course of business, without any actual notice or knowledge of any defect, infirmity, or invalidity of such bonds, or any of them, and without any actual notice or knowledge of the non-performance or non-observance of any requirement of the law necessary to their validity, but so purchased the same under the full belief that all the requirements of the law necessary to their validity, had been performed and observed and complied with.

236 That in the year 1898 and prior to the 1st day of October thereof, the said E. Lathrop assigned, transferred and delivered to Alfred Shepard, the plaintiff herein, the interest coupons numbered 16 from said bonds 476, 478, 490 491, 492, and said plaintiff has ever since been the holder and owner thereof.

That the fact that the word "actual" is used in the phrase "actual notice or knowledge" hereinbefore occurring in several places, shall not be deemed as creating an inference that constructive notice or knowledge existed in such cases.

13th.

That a petition, a copy of which is hereunto annexed, marked "Exhibit B," was on the 1st day of July, 1889, filed with and presented to the board of supervisors of Tulare county at a regular meeting of said board, and no other petition for the organization of Tulare irrigation district has ever been presented to or filed with said board of supervisors; which said petition was printed and published for two weeks during the month of June, 1889, in a newspaper printed and published in said Tulare county, to wit: the Weekly Tulare Register.

14th.

That during the time said petition was printed and published in said newspaper, and immediately following and below said petition, as published, and in the same column of the paper was printed a notice, a copy of which notice is hereunto annexed and marked "Exhibit C," and no other notice of the hearing of said or any peti-

tion for the organization of Tulare irrigation district, was ever given or published. Said notice was in the same type as said petition in said publication, and enclosed therewith, between two black lines across the column, the first at the head of such petition and the last at the end of such notice.

237

15th.

That at the time of the presentation of said petition the said board of supervisors caused to be entered on the minutes of said board, the order set forth in paragraph VIII of page 17 of the defendant's answer herein, and on July 6th, 1889, said board caused to be entered on its said minutes, an order, a copy of which is alleged in said paragraph VIII to have been entered by said board on that date, and thereafter, on July 11th, 1889, said board caused to be entered on its minutes the order hereunto annexed, marked "Exhibit D."

16th.

That on the 2nd day of September, 1889, the clerk of said board of supervisors, entered upon their minutes an order purporting to have been passed by said board, a true copy of which order in full, is hereunto annexed, and marked "Exhibit E."

17th.

That said petition so presented July 1st, 1889, was not copied or set out at length in the minutes of the said board of supervisors, nor in any way referred to or identified than as appears in the orders of said board, hereinbefore set forth, and hereto annexed.

18th.

That said board caused to be filed for record in the office of the recorder of said Tulare county, on September 14, 1889, the certified copy of the order hereunto annexed, marked "Exhibit A," hereinbefore referred to, and no other order of said board relating to the organization of said district, was ever filed in the office of the county recorder of said Tulare county. That an election was called and held as recited in said "Exhibit A," of which due notice was given and in such notice the lands of such proposed district were the same as those recited in said "Exhibit A," as constituting
238 such proposed district.

19th.

No other orders or proceedings relating to the organization of said district, were ever made or had by said board of supervisors, than as herein stipulated, and as recited in said exhibits.

20th.

That G. G. Kelley and B. W. Jauchius are the owners of the lands alleged in said complaint in intervention, as therein stated; that said G. G. Kelley is a citizen of the United States and a resident of the State of Massachusetts, and that said B. W. Jauchius is a citizen of the United States, and a resident of the State of California.

21st.

And nothing herein contained shall be construed to prevent the defendant from showing or maintaining that the plaintiff was, or his predecessors in interest were, affected with constructive notice or knowledge, nor that, notwithstanding his or their want of actual notice or knowledge, the plaintiff is still not entitled to recover, by reason of any facts showing that the bonds are invalid, even in the hands of purchasers for value, without actual notice or knowledge.

239 "EXHIBIT A."

The board of supervisors of Tulare county, State of California, met as a board of canvassers, on Monday, the second day of September, 1889, for the purpose of determining the result of the special election held in said Tulare county, as follows: Held on the 24th day of August, 1889, to vote for and against the organization of the Tulare irrigation district, and officers therefor.

Present: D. V. Robinson chairman T. E. Henderson James Barton, W. J. Newport, supervisors.

Absent: Supervisor J. H. Woody.

And the returns of said election being filed with the county clerk and *ex officio* clerk of said board, they were this day opened and canvassed by said board of supervisors, from which it appears that there were cast for "Irrigation district, Yes" and "Irrigation district, No," and for each of the persons hereinafter named for the respective offices of such proposed irrigation district, the following votes, to wit:

In the Tulare Irrigation District.

	Division No. 1.	Division No. 2.	Division No. 3.	Division No. 4.	Division No. 5.	Total.
Irrigation district—Yes	27	27	13	403	7	484
" " No	.....	1	.....	6	.....	7
For director, Division No. 1, A. P. Merritt	26	27	13	409	7	483
For director, Division No. 2, W. B. Cartmill	27	27	13	409	7	484
For director, Division No. 3, J. W. Mackie	27	27	13	409	7	484
For director, Division No. 4, S. Richardson	27	27	13	409	7	484
For director, Division No. 5, J. F. Gibson	27	27	13	409	7	484
For treasurer, John A. Goble	26	27	13	409	7	483
For assessor, A. O. Erwin	27	26	13	409	7	483
For collector, Alfred Fay	27	26	13	409	7	483

240 Now, therefore, we, the board of supervisors of Tulare county, State of California, do hereby declare that at the special election held in said Tulare county on Saturday the 24th day of August, 1889, for the purpose of voting for and against the for-

mation of a proposed irrigation district, to be known as the Tulare irrigation district, and for officers for such district, the number of votes are correct as set forth in the foregoing statement.

That the several candidates for the respective offices named "Irrigation district, Yes," and "Irrigation district, No," received the whole number of votes set opposite their respective names and places in said statement.

And we further declare the territory embraced in the following-described limits, to wit:

Commencing at the quarter-section corner on the east side of section twenty (20) in township 19 south of range 25 east, Mount Diablo base and meridian; running thence west one-half (½) mile; thence north one-fourth (¼) mile; thence west one half (½) mile; thence north one-half (½) mile; thence west one-half (½) mile; thence south one-half (½) mile; thence west one-half (½) mile; thence south one-fourth (¼) mile; thence west one-half (½) mile; thence south three-fourths (¾) mile; thence west one-half (½) mile; thence south one (1) mile; thence west about two hundred and fifty (250) rods, more or less, to the east side of the Southern Pacific Railway right of way; thence a little west of north on said railway line one-half (½) mile more or less to the center section line running east and west through section twenty-seven in township nineteen (19) south, range twenty-four east; thence east one-half (½) mile more or less, to quarter-section corner on the east side of said section twenty-seven (27); thence north one-half (½) mile; thence west one-fourth (¼) mile; thence north one (1) mile; thence west one-fourth (¼) mile; thence south one-
241 half (½) mile; thence west one-half (½) mile; thence north one-half (½) mile more or less to the east side of the Southern Pacific Railway right of way; thence northerly along the said the east line of said right of way one (1) mile more or less to the north line of section sixteen (16) township nineteen (19) south, range twenty-four east; thence west two and one-half (2½) miles more or less to the northwest corner of section eighteen (18) township nineteen (19) south, range twenty-four (24) east; thence south one-half (½) mile more or less to the northerly line of the United States survey of the swamp and overflowed land along the line of the Packwood creek; thence southwesterly following the meanders of said line of the swamp and overflowed land five (5) miles more or less to the township line between townships nineteen (19) and twenty (20) south, at a point at or near the quarter-section corner of the south side of section thirty-three, township nineteen (19) south, range twenty-three (23) east; thence east on said township line three-fourths (¾) miles more or less to the southwest corner of the southeast quarter (¼) of the southwest quarter (¼) of section thirty-four (34) township nineteen (19) south, range twenty-three (23) east; thence north one-fourth (¼) mile; thence east one-fourth (¼) mile; thence north three-fourths (¾) miles; thence east one and one-half (1½) miles; thence north one (1) mile; thence east one-half (½) mile; thence south one (1) mile; thence east one and one-half (1½) miles; thence south one (1) mile; thence west one (1) mile; thence south

(1) mile; thence west two (2) miles; thence south one and one-half (1½) miles; thence east one-half ½ mile; thence north one-half (½) mile; thence east one (1) mile; thence north one-half (½) mile; thence east one-half (½) mile; thence north one-half (½) mile; thence east one (1) mile; thence north three-fourths (¾) miles; thence east one-half (½) mile; thence south one-fourth (¼) mile; thence east
242 one half (½) mile; thence south one-fourth (¼) mile; thence west one-half (½) mile; thence south one-fourth (¼) mile; thence east one (1) mile; to the quarter-section corner on the south side of section four (4) in township twenty (20) south, range twenty-four (24) east; thence south one-half (½) mile; thence west one-fourth (¼) mile; thence south one-fourth (¼) mile; thence west three-fourths (¾) mile; thence south three-fourths (¾) mile; thence west one (1) mile; thence south one-half (½) mile; thence west two and one-half (2½) miles; thence south two (2) miles; thence east one (1) mile; thence north one-half (½) mile; thence east one (1) mile; thence south one-half (½) mile; thence east one-half (½) mile; thence north one-half (½) mile; thence east one-half (½) mile; thence south one and one-fourth (1¼) miles; thence east one-half (½) mile; thence south two and one-fourth (2¼) miles; thence east one (1) mile, more or less, to the channel of Elk bayou; thence following the meanderings of said Elk bayou in a northeasterly direction about three (3) miles more or less to the one-half (½) section line running north and south through section two (2) township twenty-one (21), south, range twenty-four (24) east; thence north on said half-section line one-half (½) mile more or less to the northwest corner of the south one-half (½) of northeast one-fourth (¼) of said section two (2); thence east one-half (½) mile; thence north three-fourths (¾) miles; thence west one-half (½) mile; thence north one and one-fourth (1¼) miles; thence west one-fourth (¼) mile; thence north about sixty (60) rods to the line of the swamp and overflowed land on the northeast one-fourth (¼) of section twenty-seven (27) township twenty (20) south, range twenty-four (24) east; thence along the meanderings of said line of the swamp and overflowed land in a northeasterly direction about eighty (80) rods more or less, to where said line crosses section line between sections twenty-two (22) and
243 twenty-seven (27) in township twenty (20) south, range twenty-four (24) east; thence east on said section line ten (10) rods more or less to the southeast corner of said section twenty-two (22); thence north one-fourth (¼) mile; thence east one-half (½) mile more or less to the Southern Pacific railway; thence northerly along said railway twenty (20) rods more or less to north line of the swamp and overflowed land on section twenty-three (23) township twenty (20) south, range twenty-four (24) east; thence northeasterly about three (3) miles more or less, following the meanderings of said northerly line of said swamp and overflowed land to the east line of section eighteen (18) at or near the quarter-section corner on the east side of said section eighteen (18) in township twenty (20) south, range twenty-five (25) east; thence north one-half (½) mile more or less to the northeast corner of said section eighteen (18); thence

west one-fourth (¼) mile; thence north three-fourths (¾) miles; thence west one-half (½) mile; thence north three-fourths (¾) mile; thence east one-fourth (¼) mile; thence north one-half (½) mile; thence east one-half (½) mile; thence north one-half (½) mile; thence west one-half (½) mile; thence south one-half (½) mile; thence west one (1) mile; thence south one-half (½) mile; thence west one-half (½) mile; thence north one-half (½) mile; thence east one-half (½) mile; thence north one-half (½) mile to center of section thirty-six (36) township nineteen (19) south, range twenty-four (24) east; thence west one-half (½) mile; thence north one-half (½) mile; thence east one-half (½) mile; thence north one-half (½) mile; thence east one (1) mile; thence south one-half (½) mile; thence east one-fourth (¼) mile; thence north one-half (½) mile; thence east one-fourth (¼) mile; thence north one-half (½) mile; thence east one (1) mile more or less,
244 to the line of the swamp and overflowed land on the northeast one-fourth of section twenty-nine (29), township nineteen (19) south, range twenty-five (25) east, thence southwesterly following the meanderings of said line of said swamp and overflowed land about three-fourths (¾) of one mile, more or less, to the east line of the west one-half (½) of the northwest one-fourth (¼) of section twenty-nine (29) in township nineteen south, range twenty-five (25) east; thence south on said line thirty (30) rods, more or less, to the southeast corner of said west one-half (½) of the northwest one-fourth (¼) of said section twenty-nine (29); thence west thirty (30) roads more or less to the line of the swamp and overflowed land; thence southwesterly following the meanderings of said line of swamp and overflowed land about forty (40) rods to the west line of said section twenty-nine (29); thence south on said section line about one hundred and forty (140) rods more or less to southwest corner of said section twenty-nine (29); thence east one (1) mile; thence north one hundred and twenty (120) rods; thence west forty (40) rods; thence north forty (40) rods; thence east forty (40) rods; thence north one (1) mile to place of beginning. Excepting therefrom, the southeast one-fourth (¼) of the southeast one-fourth (¼) of section twenty-four (24); and the north one-half (½) of the north one-half (½) and southeast one-fourth (¼) of the northwest one-fourth (¼) of section twenty-five (25), all in township nineteen (19) south, range twenty-five (25) east. Also, the south one hundred and forty-two (142) acres of the southwest one-fourth of section three (3). Also the east one-half and the northeast one-fourth (¼) and the north one-half (½) of the southeast one-fourth (¼) of section fifteen (15). Also the west one-half (½) of the northwest one-fourth (¼) of section twenty-three (23). Also the northeast one-fourth (¼) of the northwest one-fourth (¼), and the north one-half (½) of the northeast one-fourth (¼) and the fractional forty-four acres of the southeast one-fourth
245 (¼) of section twenty-eight (28), all in township twenty (20) south, range twenty-four (24) east Mount Diablo base and meridian; an irrigation district duly organized under the name and style of "Tulare irrigation district," being situate in the county of Tulare, State of California.

And we further declare that,

A. P. Merritt	was	duly	elected	director	in	division	No. 1	of	said district.
W. B. Cartmill	"	"	"	"	"	"	No. 2	"	"
J. W. Mackie	"	"	"	"	"	"	No. 3	"	"
S. Richardson	"	"	"	"	"	"	No. 4	"	"
J. F. Gibson	"	"	"	"	"	"	No. 5	"	"
A. O. Erwin	"	"	"	assessor				"	"
Alfred Fay	"	"	"	collector				"	"
John A. Goble	"	"	"	treasurer				"	"

D. V. ROBINSON, *Chairman.*

Attest: JOHN G. KNOX, *Clerk*,
By T. W. HOLDER,
Deputy Clerk.

STATE OF CALIFORNIA, } ss:
County of Tulare, }

I, John G. Knox, clerk and *ex officio* clerk of board of supervisors in and for said Tulare county, do hereby certify the foregoing to be a full, true and correct copy of the order of said board declaring the formation of the "Tulare irrigation district" and the election of officers thereof, as the same appears from the original thereof now of record in my office.

Witness my hand and the seal of said board, this 14th day of September, 1889.

JOHN G. KNOX, *Clerk*,
By A. H. MURRAY, *Deputy.*

[Seal of Board of Supervisors.]

246 (Endorsed:) Recorded at the request of A. H. Murray, Jr., 15 min. past 3 p. m. September 14th, 1889, vol. 1, pg. 136, *et seq.*, of Miscellaneous Records of Tulare County. J. M. Johnston, recorder, F. G. Lindley, deputy recorder.

247 (EXHIBIT "B.")

Petition.

To the honorable the board of supervisors of the county of Tulare, State of California:

The undersigned, your petitioners herein, respectfully represent to your honorable body, that we are freeholders owning land within the following-described district, all of which is situated within Tulare county;

That we desire to provide for the irrigation of the same;

That all of said proposed district as hereinafter described, is susceptible of one mode of irrigation from a common source, and by the same system of works; that is to say, by conveying the waters of Kaweah river, by means of dams thereon, and by main and distributing canals therefrom.

We therefore petition your honorable body and pray that said hereinafter-described district be organized an irrigation district,

under an act of the legislature of the State of California, entitled "An act to provide for the organization and government of irrigation districts and to provide for the acquisition of water and other property, and for the distribution of water thereby, for irrigation purposes," approved March 7th, 1887.

The boundaries of said proposed district are as follows:

Commencing at the northeast corner of section 12, in township 19 south, range 24 east; thence south one mile to the northeast corner of section 13, township 19, south, range 24 east, from thence east two miles to the northeast corner of section 17, township 19 south, range 25 east; from thence south 3 miles to the southeast corner of section 29, township 19 south, range 25 east; from thence west one mile to the southwest corner of section 29, last aforesaid; from thence
248 south 4 miles to the northwest corner of section 20, township 20 south, range 25 east; from thence east one mile to the northeast corner of said section 20 last aforesaid; from thence south 3 miles to the southeast corner of section 32, township 20 south, range 25 east, from thence west to the northeast corner of section 5, township 21 south, range 25 east; from thence south 2 miles to the southeast corner of section 8, township 21 south, range 25 east; from thence west 10 miles to the southeast corner of section 11, township 21 south, range 23 east; from thence north 2 miles to the southwest corner of section 2, township 21, south, range 23 east; from thence east to the southwest corner of section 31, township 20 south, range 24 east; from thence north 1½ miles to the southeast corner of the northeast quarter of section 25, township 20 south, range 23 east; from thence west to the southwest corner of the northwest quarter of said section 25 last aforesaid; from thence south one-half mile to the southeast corner of section 26, township 20 south, range 23 east; from thence west one mile to the southwest corner of said section 26 last aforesaid; from thence north 2 miles to the northeast corner of section 23, township 20 south, range 23 east; from thence east 2½ miles to the southwest corner of the southeast quarter of section 18, township 20 south, range 24 east; from thence north one-half mile to the northwest corner of the southeast quarter of said section 18 last aforesaid; from thence east one mile to the southwest corner of the northeast quarter of section 17, township 20 south, range 24 east; from thence north three-quarters of a mile to the northwest corner of the southwest quarter of the southeast quarter of section 8, township 20 south, range 24 east; from thence east three-fourths of a mile to the northwest corner of the southeast quarter of the southwest quarter of section 9, township 20 south, range 24 east; from thence north one-fourth of a mile
249 to the northwest corner of the northeast quarter of the southwest quarter of said section 9 last aforesaid; from thence east one-fourth mile to the northwest corner of the southeast quarter of said section 9 last aforesaid; from thence north one-half mile to the northwest corner of the northeast quarter of said section 9 last aforesaid; from thence west 2½ miles to the southwest corner of section 6, township 20 south, range 24 east; from thence south one-half mile to the southeast corner of the northeast quarter of

section 12 township 20 south, range 23 east; from thence west one-half mile to the southwest corner of the northeast quarter of said section 12 last aforesaid; from thence south one-half mile to the southeast corner of the southwest quarter of said section 12 last aforesaid; from thence west one-half mile to the southwest corner of said section 12, last aforesaid; from thence south one-half mile to the southeast corner of the northeast quarter of section 14, township 20 south, range 23 east; from thence west one mile to the southwest corner of the northwest quarter of said section 14 last aforesaid; from thence south one-half mile to the southeast corner of section 15, township 20 south, range 23 east; from thence west one-half mile to the southwest corner of the southeast quarter of said section 15 last aforesaid; from thence north one mile to the northwest corner of the northeast quarter of said section 15 last aforesaid; from thence east one-half mile to the northeast corner of said section 15 last aforesaid; thence north one mile to the northwest corner of section 11, township 20 south, range 23 east; from thence east one mile to the northeast corner of said section 11 last aforesaid; from thence north one mile to the southwest corner of section 36, township 19 south, range 23 east; from thence west along the township line about 2½ miles to the west line of the swamp and overflowed land on Packwood creek; from thence
250 northeasterly along the meandering west line of said swamp and overflowed land to the northeast corner of the southeast quarter of section 13, township 19 south, range 23 east; from thence north to the northwest corner of section 18, township 19 south, range 24 east; from thence east 3 miles to the northwest corner of section 15, township 19 south, range 24 east; from thence north one mile to the northwest corner of section 10, township 19 south, range 24 east; from thence east 3 miles to the northwest corner of section 12, township 19 south, range 24 east; the place of beginning.

We respectfully request that said district be designated as the Tulare irrigation district."

	No. of acres.		No. of acres.
1. J. Goldman	900	J. W. Stufflebeem	180
2. J. C. Gist	80	J. B. Jumwalt	900
3. William Bruce	160	H. H. Francisco	40
4. C. H. Nelson	12½	F. Rosenthal	36
5. E. Lathrop	320	J. W. Dunlap	40
6. C. A. Hitchcock	80	Thos. H. Thompson	720
7. Geo. F. Trescott	100	S. S. Ingham	400
8. Jos. Kerkner	80	J. I. Batchelder	130
9. T. J. Gist	160	Frederick H. Wales	278
10. Z. H. Morris	40	Joseph Merritt	160
11. Alfred Fay	160	J. O. Lovejoy	50
12. George Hewitt	226	J. W. Mackie	160
13. B. Noussitou	260	James Stewart	180
14. W. A. Jacobs	494	W. I. Burnett	1091
15. W. H. Coggleshell	120	W. H. Alford	32
16. J. W. Chipwith	84	M. H. Patten	160
17. W. E. Cartmill	150	P. D. Fowler	90
18. J. B. Hamilton	159	R. N. Hough	243
19. Sam. Newell	320	C. Dunning	93
20. Robert Newell	100	Anson P. Hall	20

251	21. John W. Hooper	680	John M. Ginley	507
	22. E. J. Hodges	80	Luke F. Warren	480
23.	J. T. Chisholm	180	Amos Hicks	10
24.	W. F. Stewart	160	S. Fowler	200
25.	E. A. Brady	40	M. M. Burnett	500
26.	I. A. Moorehead	240	S. A. Blythe	20
27.	Eva M. Moody	80	O. S. Woodruff	20
28.	John A. Goble	40	H. K. Ayer	32
29.	Sam. Richardson	250	S. Weaver	380
30.	B. M. Alford	40	A. W. Stewart	80
31.	A. T. Cotton	320	O. B. Taylor	32
32.	R. H. Parrish	160	B. G. Parker	
33.	W. E. Brown	160	J. H. Aten	80
34.	E. T. Cosper	160	C. G. Hough	240
35.	W. H. Hillhoren	160	D. O. Hammon	180
36.	C. S. Jordon	320	J. W. Davis	30
37.	John C. Hawkins	80	E. Oakford	180
38.	H. E. Dye	160	John G. Eckels	3
39.	Theo. Harris	80	A. W. De Witt	20
40.	E. W. Dutcher	40	A. A. Hall	40
41.	J. F. Boller		J. H. Stufflebeem	480
42.	B. F. Moore	300	R. T. McMillan	32
43.	William Swall	160	G. W. Connor	5
44.	Jesse Richardson	60	R. S. Hill	145
45.	Amos Roberts	779	E. M. De Witt	640
46.	E. Nolfskill	789	J. M. Hart	30
47.	R. B. Snell	100	Clulli Averill	60
48.	H. S. Haseltine	140	F. M. Schultz	5
49.	Mary L. Smith	342	G. W. Kirkes	80
50.	J. E. Carter	80	C. H. Randell	160
51.	William Carpenter	225	William Dobson	7
52.	A. T. Fowler		Thomas Dobson	22
	53. Sol Ephraim	720	T. W. Maples	
252	54. L. E. Schoenemann		Frank P. Taylor	
	55. A. J. Pillsbury		H. A. Charters	
56.	Chas. M. Hatch		Miles Ellsworth	
57.	H. Frank Tandy	10	G. Q. Gill	
58.	S. D. Ayers	170	L. H. Stokes	7
59.	S. Bowles		J. A. Allen	
60.	I. H. Ham		E. W. Holland	
61.	L. Schoenfeld		R. K. Ham	
62.	R. Linder		R. S. Black	
63.	J. M. Alexander	170	S. T. Alexander	1890
64.	D. W. Madden		R. Chandler	135¼
65.	E. T. Buckman		T. Bacigalupi	320
66.	S. Witkowski			

253 "EXHIBIT C."

Notice.

"Pursuant to the statutes in such cases made and provided, notice is hereby given that the above and foregoing petition will be presented to the board of supervisors in and for the county of Tulare, at their first regular meeting, in the month of July, 1889, to wit: on Monday, the 1st day of July, 1889, at which time any person or persons desiring so to do, may present their objections, if any they have, why said petition should not be granted."

"EXHIBIT D."

In the matter of the petition of J. Goldman and others for the formation of an irrigation district.

At a regular meeting of the board of supervisors of the county of Tulare, held at their usual place of meeting in the courthouse at Visalia, on Monday, the first day of July, 1889, J. Goldman, J. C. Gist, William Bruce, and more than fifty other persons duly presented to this board a petition in writing, signed by them respectively, praying that the land embraced in the proposed district, the boundaries of which were set forth and particularly described in said petition, be organized into an irrigation district under the provisions of an act of the legislature of the State of California, entitled "An act to provide for the organization and government of irrigation districts, and to provide for the acquisition of water and other property, and for the distribution of water thereby for irrigation purposes," approved March 7th, 1887.

Said petition was accompanied with a good and sufficient bond on behalf of petitioners, in double the amount of the probable costs of organizing said district, conditioned that the said bondsmen
254 will pay all said costs, in case said organization shall be effected, which said bond was duly approved by said board of supervisors and received with said petition and filed with the clerk of said board, and thereupon the further hearing and consideration of said petition and the matter of the organization of said therein-proposed district was by said board duly continued and set for hearing on the 6th day of July, 1889, at ten o'clock a. m., at which time the board duly convened and proceeded to the further hearing of the matter of said petition, and it appearing that several persons owning lands within the boundaries of said proposed district, as set forth in said petition, were present before the board, and had filed with the clerk of said board, their several applications in writing, asking that the lands severally owned by them, be excluded from said irrigation district as finally fixed by said board, upon the ground that such land will not be benefited by irrigation by said system proposed in said petition, the board proceeded to hear the testimony and proofs offered in evidence by and on behalf of said petitioners, and by and in behalf of said applicants, to have their lands excluded from said district, and the board having adjourned said hearing from time to time, and said testimony and proofs having been fully received, and the matter of the formation of said proposed district, and the proper boundaries having been fully argued to said board by attorneys representing the different parties having an interest in said matters, and the board having fully considered the testimony and proofs and arguments of said attorneys, now, on this 11th day of July, 1889, finds the facts to be as follows, to wit:

That said petition for the formation of said proposed irri-

gation district was duly signed by more than fifty freeholders owning lands susceptible to one mode of irrigation, from a common source, by the same system of works, which lands
255 are embraced within the boundaries of said proposed district, as hereinafter modified, fixed and established by said board, and that said petitioners desire to provide for the irrigation of said lands. That after said petition was signed by said petitioners and before the same was presented to this board, as hereinafter stated, said petition together with a notice stating that said petition would be presented to this board, on Monday, the 1st day of July, 1889, was duly published for three consecutive weeks next before said 1st day of July, 1889, in the "Weekly Tulare Register," a weekly newspaper printed and published in said Tulare county, that on Monday, the 1st day of July, 1889, being the first day of the regular July meeting of this board, and this board being then convened in regular session, said petition was duly presented to this board, and at the same time and accompanying said petition, said petitioners presented to this board, a good and sufficient bond in double the amount of the probable costs of organizing said district, and conditioned that the bondsmen, the obligors in said bond named, will pay all costs in case said organization shall not be effected, which said bond was duly approved by this board and filed with the clerk thereof.

That in order to comply with the requirements of said act of the legislature hereinbefore cited, it is necessary to make changes in the boundaries of said district proposed by said petitioners, and to exclude and except from the operations of said act of the legislature hereinbefore cited, and from said proposed district certain lands within the exterior boundaries of said proposed district, as the same are hereinafter and hereby established and defined, for the reason that in the opinion of this board, said lands so excluded are lands which will not be benefited by irrigation by the same system of works applicable to the other lands in such proposed district,
256 which lands so excepted are hereinafter specifically designated and described.

That all the lands embraced within the boundaries of said proposed district, as the same are hereinafter established and defined, other than the lands excepted from the said proposed district and hereinafter specifically designated, are susceptible of one mode of irrigation from a common source and by the same system of works.

Wherefore, it is ordered and adjudged, by said board of supervisors that the boundaries of said proposed irrigation district be and they are hereby established and defined as follows, to wit:

Commencing at the quarter-section corner on the east side of section 20 in township 19 south of range 25 east, Mt. Diablo base and meridian; running thence west one-half mile; thence north one-quarter mile; thence west one-half mile; thence north one-quarter mile; thence west one-half mile; thence north one-half mile; thence west one-half mile; thence south one-half mile; thence west one-half mile; thence south one-quarter mile; thence west one-half mile; thence south three-quarters mile; thence west

one-half mile; thence south one mile; thence west 250 rods more or less to the east side of the Southern Pacific Railway right of way; thence a little west of north on said railway line one-half mile more or less to the center section line running east and west through section 27 in township 19 south, range 24 east, thence east one-half mile more or less, to quarter-section corner on the east side of section 27, thence north one-half mile; thence west one-quarter mile; thence north one mile; thence west one-quarter mile; thence south one-half mile; thence west one-half mile; thence north one-half mile more or less, to the east side of the Southern Pacific right of way; thence northerly along the said east line of the said right of way one mile more or less to the north line of section 16, township 19 south, range 24 east; thence west 2½ miles more or less, to the northwest corner of section 18,
257 township 19 south, range 24 east; thence south one-half mile more or less to the northerly line of the United States survey of the swamp and overflowed land along the line of the Packwood creek; thence southwesterly following the meanders of said line of the swamp and overflowed land five miles more or less to the township line between townships 19 and 20 south, at a point at or near the quarter-section corner on the south side of section 33, township 19 south, range 23 east; thence east on said township line three-quarters mile more or less to the southwest corner of the southeast quarter of the southwest quarter of section 34, township 19 south, range 23 east, thence north one-quarter mile; thence east one-quarter, thence north three-quarters mile; thence east one and one-half miles; thence north one mile; thence east one-half mile; thence south one mile; thence east one and one-half miles; thence south one mile; thence west one mile; thence south one mile; thence west two miles; thence south one and one-half miles; thence — one-half mile; thence north one-half mile; thence east one mile; thence north one-half mile; thence east one-half mile; thence north one-half mile; thence east one mile; thence north three-quarter- miles; thence east one-half mile; thence south one-quarter mile; thence east one-half mile; thence south one-quarter mile; thence west one-half mile; thence south one-quarter mile; thence east one mile to the quarter-section corner on the south side of section 4, township twenty south, range 24 east; thence south one-half mile; thence west one-quarter mile; thence south one-quarter mile; thence west three-quarters mile; thence south three-quarters mile; thence west one mile; thence south one-half mile; thence west 2½ miles; thence south 2 miles; thence east one mile; thence north one-half mile; thence east one mile; thence south one-half mile; thence east one-half mile; thence north one-half mile; thence east one-half mile; thence south one and one-quarter
258 miles; thence east one-half mile; thence south 2¼ miles; thence east one mile more or less to the channel of Elk bayou; thence following the meanderings of said bayou in a northeasterly direction about three miles more or less to the one-half section line running north and south through section 2 township 21 south range 24 east; thence north on said one-half section line one-half mile

more or less to the northwest corner of the south one-half of the northeast quarter of said section two; thence east one-half mile; thence north three-quarters mile; thence west one-half mile; thence north one and one-quarter miles; thence west one-quarter mile; thence north about 60 rods to the line of the swamp and overflowed land on the northeast quarter of section 27, township 20 south range 24 east; thence along the meanderings of said line of the swamp and overflowed land in a northeasterly direction about 80 rods more or less to where said line crosses section line between sections 22 and 27 in township 20 south, range 24 east; thence east on said section line, 10 rods more or less, to the southeast — of said section 22; thence north one-quarter mile; thence east one-half mile more or less to the Southern Pacific railway; thence northerly along said railway 20 rods more or less to the north line of the swamp and overflowed land on section 2, township 20 south, range 24 east; thence northeasterly about 3 miles more or less, following the meanderings of said northerly line of said swamp and overflowed land, to the east line of section 18, at or near the quarter-section corner on the east side of said section 18 in township 20 south, range 25 east; thence north one-half mile more or less to the northeast corner of said section 18; thence west one-quarter mile; thence north three-quarters mile; thence west one-half mile; thence north three-quarters mile; then east one-quarter mile; thence north one-half mile; thence east one-half mile; thence north one-half mile; thence west one-half
259 mile; thence south one-half mile; thence west one mile; thence south one-half mile; thence west one-half mile; thence north one-half mile; thence east one-half mile; thence north one-half mile to the center of section 36, township 19 south, range 24 east; thence west one-half mile; thence north one-half mile; thence east one-half mile; thence north one-half mile; thence east one mile; thence south one-half mile; thence east one-quarter mile; thence north one-half mile; thence east one-quarter mile; thence north one-half mile; — east one-quarter mile; thence north one-half mile; thence *thence* east one mile more or less to the line of the swamp and overflowed land on the northeast quarter of section 29, township 19 south, range 25 east; thence southwesterly following the meanderings of said line of said swamp and overflowed land about three-quarters of one mile more or less, to the east line of the west half of the northwest quarter of section 29, in township 19 south, range 25 east; thence south on said line 30 rods more or less to the southeast corner of said west one-half of the northwest quarter of said section 29; thence west 30 rods more or less to the line of the swamp and overflowed land, thence southwesterly following the meanderings of said line of swamp and overflowed land about 40 rods to west line of said section 29 thence south on said section line, about 140 rods more or less to the southwest corner of said section 29; thence north 40 rods; thence east 40 rods; thence north one mile to the place of beginning.

That the following is a particular description of the lands situate within the exterior boundaries of said proposed district hereinbefore

referred to, which are excepted from the operation of said act of the legislature hereinbefore cited, and excepted and taken out of said proposed district, to wit:

S. E. ¼ of S. E. ¼ of sec. 24, N. ½ of N. ½ and S. E. ¼ of N. W. ¼ sec. 25, T. 19 S. R. 25 E. S. 142 A. of S. W. ¼ of sec. 3, E. ½ and N. E. ¼ and N. ½ of S. E. ¼ of sec. 15, W. ½ of N. W. ¼ of sec. 23, N. E. ¼ of N. W. ¼ and N. ½ of N. E. ¼ and frl 44 A. of S. E. ¼ of sec. 28, T. 20 S. R. 24 E.

And it is hereby ordered that the said proposed district be and the same is hereby divided into five divisions, as nearly equal in size as practicable, and numbered respectively, 1st, 2nd, 3rd, 4th, and 5th, as follows, to wit:

(Here follows description of the separate boundaries of each division of said district.)

And it is further ordered that at an election held in said district at the various polling places hereinafter specified and ordered within the boundaries of said district between the hours specified by law, on Saturday, the 24th day of August, 1889, for the purpose of determining whether said proposed district shall be organized under the provisions of said act of the legislature hereinbefore recited, and referred to, said irrigation district shall be known and designated as the "Tulare irrigation district."

And it is further ordered that notice of such election signed by the chairman and clerk of this board, and attested by the official seal of this board be given, which notice shall describe the boundaries of said proposed district established by this board and shall designate the name of said proposed district, to wit: the "Tulare irrigation district," and shall require the electors of said district, to cast ballots which shall contain the words, "Irrigation district—Yes," or "Irrigation district—No," or words equivalent thereto, and shall contain the names of persons to be voted for, to fill the following offices of said proposed district, to wit: an assessor, a collector, a treasurer, and a board of five directors, one of said directors to be elected from each of said divisions of said proposed district, hereinbefore described and for the purpose of the election above provided for, election precincts are hereby ordered and established in said proposed district as follows, to wit:

(Here follows a description of the five election precincts in said proposed district, and also includes the names of the polling places and the names of the persons who are to act as election officers.)

D. V. ROBINSON, *Chairman.*

Attest: JOHN G. KNOX, *Clerk,*
By N. W. HOLDER,
Deputy Clerk.

"EXHIBIT E."

The board of supervisors of Tulare county, State of California, met as a board of canvassers on Monday, the 2nd day of September, 1889, for the purpose of determining the result of the special

election held in Tulare county, as follows: Held on the 24th day of August, to vote for and against the organization of the Tulare district and officers therefor.

Present: D. V. Robinson, chairman. T. G. Henderson, James Barton, W. J. Newport, supervisors.

Absent: Supervisors J. H. Woody,

And the returns of said election being filed with the county clerk and *ex officio* clerk of said board, they were this day opened and canvassed by said board of supervisors, from which it appears that there were cast for "Irrigation district, Yes" and for "Irrigation district, No," and for each of the persons hereinafter named, for the respective offices of such proposed irrigation district, the following votes, to wit:

In the Tulare Irrigation District

	Division No. 1.	Division No. 2.	Division No. 3.	Division No. 4.	Division No. 5.	Total.
Irrigation district Yes.....	27	27	13	403	7	484
" " No	.....	1	.....	6	.....	7
For director Div. No. 1 A. P. Merritt.	26	27	13	409	7	483
For director Div. No. 2 W. B. Cartmill....	27	27	13	409	7	484
For director Div. No. 3 J. W. Mackie.....	27	27	13	409	7	484
For director Div. No. 4 S. Richardson.....	27	27	13	409	7	484
For director Div. No. 5 J. F. Gibson.. .. .	27	27	13	409	7	484
263 For treasurer John A. Goble	26	27	13	409	7	483
For assessor A. O. Erwin....	27	26	13	409	7	483
For collector Alfred Fay.....	27	26	13	409	7	483

Now, therefore, we, the board of supervisors of Tulare county, State of California, do hereby declare that at the special election held in said Tulare county on Saturday the 24th day of August, 1889, for the purpose of voting for and against the formation of a proposed irrigation district, and for officers for such district, the number of votes are correct as set forth in the foregoing statement.

That the several candidates for the respective offices named and "Irrigation district" Yes, and "Irrigation district No," received the whole number of votes set opposite their respective names and places in said statement.

And we further declare the territories embraced in the following-described limits, to wit:

Commencing at the quarter-section corner on the east side of section 20 in township 19 south range 25 east Mount Diablo base and meridian; running thence west one-half mile; thence north ¼ mile; thence west ½ mile; thence north ¼ mile; thence west ½ mile; thence north ½ mile; thence west ½ mile; thence south

¼ mile; thence west ½ mile; thence south ¼ mile; thence west ½ mile; thence south ¾ mile; thence west ¼ mile; thence south 1 mile; thence west about 250 rods more or less to the east side of the Southern Pacific railway right of way; thence a little west of north on said railway line, ½ mile more or less to the center section line running east and west through section 27 in township 19 south, range 24 east; thence east ½ mile more or less to quarter-section corner on the east side of said section 27; thence north ½ mile
264 thence west ¼ mile; thence north 1 mile; thence west ¼ mile; thence south ½ mile; thence west ½ mile; thence north ½ mile; more or less to the east side of the Southern Pacific Railway right of way; thence northerly along the said east line of the said right of way 1 mile, more or less to the north line of section 16, township 19 south, range 24 east, thence west 2½ miles more or less to the northwest corner of section 18, township 19 south, range 24 east; thence south ½ mile more or less to the northerly line of the United States survey of the swamp and overflowed land along the line of the Packwood creek; thence southwesterly following the meanders of said line of the swamp and overflowed land, 5 miles more or less, to the township line between townships 19 and 20 south, at a point at or near the quarter-section corner on the south side of section 33, township 19 south, range 23 east, thence north ¼ mile, thence east ¼ mile; thence north ¾ miles; thence east ½ mile; thence north 1 mile; thence east ½ mile; thence south 1 mile; thence east 1½ miles; thence south 1 mile; thence west 1 mile; thence south 1 mile; thence west 2 miles; thence south 1½ miles; thence east ½ mile; thence north ½ mile; thence east 1 mile; thence north ½ mile; thence — ½ mile; thence north ½ mile; thence east 1 mile; thence north ¾ mile; thence east ½ mile; thence south ¼ mile; thence west ½ mile; thence south ¼ mile; thence east 1 mile to the quarter-section corner on the south side of section 4, township 20 south, range 24 east, thence south ½ mile; thence west ¼ mile; thence south ¼ mile; thence west ¾ mile; thence south ¾ mile; thence west 1 mile; thence south ½ mile; thence west 2½ miles; thence south 2 miles; thence east 1 mile; thence north ½ mile; thence east 1 mile; thence south ½ mile; thence east ½ mile; thence north ½ mile; thence east ½ mile; thence south 1¼ miles; thence east ½ mile; thence south 2½ miles; thence
265 east 1 mile, more or less, to the channel of Elk bayou; thence following the meanderings of said Elk bayou in a northeasterly direction about 3 miles more or less to the ½-section line running north and south through section 2, township 21 south, range 24 east; thence north on said ½-section line ½ mile more or less to the northwest corner of the south ½ of northeast ¼ of said section 2; thence east ½ mile; thence north ¾ mile; thence west ½ mile; thence north 1¼ miles; thence — ¼ mile; thence north about 60 rods to the line of the swamp and overflowed land on the northeast ¼ of section 27, township 20 south, range 24 east; thence along the meanderings of said line of the swamp and overflowed land, in a northeasterly direction, about 80 rods more or less to where said line crosses section line between sections 22 and 27 in township 20

south, range 24 east; thence east on said section line 10 rods more or less to the southeast corner of said section 22; thence north ¼ mile; thence east ½ mile more or less to the Southern Pacific railway; thence northerly along said railway 20 rods more or less to the north line of the swamp and overflowed land on section 23, township 20 south, range 24 east; thence northeasterly about 3 miles more or less, following the meanderings of said northerly line of said swamp and overflowed land to the east line of section 18, at or near the quarter-section corner on the east side of said section 18, in township 20 south, range 25 east; thence north ½ mile more or less to the northeast corner of said section 18, thence west ¼ mile; thence north ¾ mile; thence west ½ mile; thence north ¾ mile; thence east ¼ mile; thence north ½ mile; thence east ½ mile; thence north ½ mile; thence west ½ mile; thence south ½ mile; thence west 1 mile; thence south ½ mile; thence west ½ mile; thence south ½ mile; thence west ½ mile; thence north ½ mile; thence east ½ mile; thence north ½ mile; to the center of section 36, township 19 south, range 24 east;
266 thence west ½ mile; thence north ½ mile; thence east ½ mile; thence north ½ mile; thence east 1 mile; thence south ½ mile; thence east ¼ mile; thence north ½ mile; thence east ¼ mile; thence north ½ mile; thence east 1 mile more or less, to the line of the swamp and overflowed land on the northeast ¼ of section 29, township 19 south, range 25 east; thence southwesterly following the meanderings of said line of said swamp and overflowed land about ¾ of one mile more or less to the east line of the west ½ of northwest ¼ of section 29, in township 19 south, range 25 east; thence south on said line 30 rods more or less to the southeast corner of said west ½ of the northwest ¼ of said section 29; thence west 30 rods more or less to the line of the swamp and overflowed land; thence southwesterly following the meanderings of said line of swamp and overflowed land about 40 rods to west line of said section 29; thence south on said section line about 140 rods more or less to the southwest corner of said section 29; thence east one mile; thence north 120 rods; thence west 40 rods; thence north 40 rods; thence east 40 rods; thence north one mile to the place of beginning. Excepting therefrom S. E. ¼ of S. E. ¼ of sec. 24, N. ½ of N. ½ and S. E. ¼ of N. W. ¼ sec. 25, T. 19 S., R. 25 E., S. 140 acres of S. W. ¼ of sec. 3, E. ½ and N. E. ¼ and N. ½ of S. E. ¼ of sec. 15, W. ½ of N. W. ¼ of sec. 23, N. E. ¼ of N. W. ¼ and N. ½ of N. E. ¼ and fractional 44 A. of S. E. ¼ of sec. 28, T. 20 S., R. 24 E. An irrigation district duly organized under the name and style of, "Tulare irrigation district," being situate in the county of Tulare, State of California.

And we further declare that,

A. P. Merritt was duly elected director in division No. 1 of said district.

W. B. Cartmill was duly elected director in division No. 2 of said district.

J. W. Mackie was duly elected director in division No. 3 of said district.

267 S. Richardson was duly elected director in division No. 4 of said district.

J. F. Gibson was duly elected director in division No. 5 of said district.

A. O. Erwin was duly elected assessor of said district.

Alfred Fay was duly elected collector of said district.

John A. Goble was duly elected treasurer of said district.

D. V. ROBINSON, *Chairman.*

Attest: JOHN G. KNOX, *Clerk,*
By T. W. HOLDER,
Deputy Clerk."

Thereupon the plaintiff offered in evidence all the facts stated in the first twelve paragraphs of the foregoing stipulation, filed March 29th, 1900, and the defendant and intervenors objected to such offer, and to the admission of said facts, or any of them, upon the following grounds:

That the testimony offered is irrelevant, incompetent and immaterial, and that the statute of the State of California, under the provisions of which the bonds in suit are claimed to have been issued, is void, invalid, and unconstitutional, as being an attempt to take property and impose obligations without due process of law, and that said statute deprives defendant and the land-owners of such district of the equal protection of the law.

That said statute does not provide for any hearing of, or any day in court on the question of the formation of said irrigation district, and that the notice called for by said statute of the hearing on the petition for the formation of such district, was not, nor was any other notice given; and that the notice claimed to have been

268 given was no notice whatever, and as such was null and void, within the decision of the supreme court of the State of California, in the case of *In re* Central Irrigation District, reported in the 117 Cal. Reports, at page 382, and such notice was not published, and does not purport to be published by authority of law, or by any one authorized to give such notice.

That defendant is not estopped to deny that said district was not duly organized, or that the law was not complied with, in regard to the formation thereof, and that it never had any legal existence.

That the recitals in said bonds cannot cure any defects in the proceedings leading to the issue thereof, and that said bonds are invalid, even in the hands of holders for value, and that the holders of said bonds cannot rely on said recitals, but are bound by and affected with notice of any and all defects and irregularities shown by the records and proceedings of said district, and are affected with constructive notice thereof; and that said records and proceedings show that said bonds are invalid in the following particulars and for the following reasons, viz:

1. That no notice was given by the board of supervisors of the county of Tulare, of the election called by them, for the formation of said Tulare irrigation district.

2. That said board of supervisors did not declare the territory

voted for an irrigation district and did not cause a copy of any order of said board declaring said district organized as an irrigation district, duly certified or otherwise, to be filed for record in the office of the county recorder of said Tulare county.

3. That the board of directors of said Tulare irrigation district, prior to the issuance of the bonds in suit, did not estimate or
269 determine the amount of money necessary to be raised for the construction, use, supply, maintenance, repairs and improvements, of the canals or works, or requiring the necessary property or rights therefor.

4. That in the petition for the confirmation for the issuance and sale of the bonds in suit, the lands claimed to be in said proposed district and affected by said bonded indebtedness, *was* not described nor in any manner referred to, so that a land-owner in said district could ascertain therefrom that the lands owned by him were affected thereby.

5. That by the order of the board of supervisors, attempting to establish and define the boundaries of said Tulare irrigation district, said board so established and defined such boundaries that said district comprises, embraces and is composed of four separate and distinct bodies of land not contiguous to each other, and which taken together did not and do not form one body of land, and is not such a body of land as is intended by said act of the legislature to be formed into an irrigation district.

6. That none of said bonds in suit bear date of the day of their issuance, nor do said bonds conform in any respect to the said act of the legislature; that all of said bonds are dated July 1st, 1890, whereas none of the bonds in this action were issued earlier than May 1891, and a greater portion thereof were issued between March, 1892, and February 1893, and that each and all of said bonds are made payable twenty years from said July 1st, 1890, and not twenty years from *said July 1st, 1890, and not twenty years from* the dates of their respective issuance.

That by the law of California, the officers of said district had no power to make any recitals in said bonds curing said defects, and that such recitals do not cure the same.

That the confirmation proceedings were void and without due or any process of law, and that no proper or any notice thereof, was given; and that until said district was duly organized, no
270 such proceedings could be had, and that the statute providing for such confirmation proceeding, is unconstitutional as not affording equal protection of the law, or due process of law, as provided by the 14th amendment to the Constitution of the United States, and is also void as special legislation under the constitution of California, and that the notice prescribed by said statute was not given, and said statute does not provide for due process of law.

And further, to the offer of the facts stated in the second paragraph of said stipulation, the defendant and intervenors objected on all the grounds last above set forth, and on the further ground that the evidence did not tend to prove the *de jure* existence of the Tulare

irrigation district, and that evidence of its *de facto* character was incompetent, irrelevant and immaterial.

Thereupon the court overruled said objections and admitted said facts in evidence, to which ruling the said defendant and said intervenors each and severally, and respectively, then and there duly excepted. (Exception No. 1.)

And thereupon, counsel for the plaintiff offered in evidence a certified copy of the judgment-roll in the matter of the Tulare Irrigation District, certified from the county clerk's office of the county of Tulare, State of California, the proceedings being what is termed confirmation proceedings, the judgment having been entered prior to the sale of any of these bonds, and the document offered being certified by the clerk of the court, on the 18th day of January, 1898, under the seal of the clerk's office of the court, the case being numbered 2329, and said judgment-roll was and is in the words and figures following, to wit:

271 In the Superior Court of the County of Tulare, State of California.

In the Matter of Tulare Irrigation District. No. —.

To the superior court of the county of Tulare, State of California:

The petitioner, The Board of Directors of Tulare Irrigation District, respectfully represents:

That said irrigation district was, on or about the 2nd day of September, 1889, duly organized as an irrigation district by the board of supervisors of said county, under and in pursuance of an act entitled, "An act to provide for the organization and government of irrigation districts and to provide for the acquisition of water and other property, and for the distribution of water thereby for irrigation purposes," approved March 7th, 1887; that ever since its organization it has claimed in good faith to be and has existed as an irrigation district.

That the first board of directors of said irrigation district was duly elected under and in pursuance of the provisions of said act.

That thereafter, at an election held in said district on the 2nd day of April, 1890, J. W. Mackie, A. P. Merritt, W. B. Cartmill, E. De Witt, and J. F. Gibson, were duly elected as members of the board of directors of said district, and thereupon duly qualified as such, and ever since their said qualification as such, they have constituted and still constitute the board of directors of said irrigation district.

272 That all the land of said district and embraced within its boundaries are situated within said county of Tulare, and that the office of the board of directors of said district is required to be kept, and in fact is kept at the city of Tulare in said county.

That the board of directors of said district, as soon as practicable after the organization of said district, to wit: on or about the 12th day of May 1890, at a regular meeting thereof, estimated and determined the amount of money necessary to be raised by said

district, for the purpose of constructing the canals and works which were necessary for the irrigation of the land of said irrigation district, for the purpose of acquiring for said district the property, water and water rights, which would be necessary therefor; that said board of directors then and there estimated that the sum of five hundred thousand dollars was necessary to be raised for the purpose aforesaid, and that the said board determined that it was necessary and proper that bonds of said district to the amount of five hundred thousand dollars ($500,000) in all respect- conforming to the provisions of said act, be issued by said district and that the same be sold in order to raise the amount of money necessary for said purposes, provided the qualified electors of said district should vote in favor of the issue of such bonds.

That thereupon said board immediately called a special election to be held in said district by the electors of said district who possessed the qualifications prescribed by said act, at which election there should be submitted to them the question whether or not such bonds of said district should be issued in the amount so determined by said board, and then and there ordered said special election to be held on Saturday, the 7th day of June, 1890; and then and there ordered that notice of said election be given by posting notices thereof in each election precinct in said district for at least twenty days before the time fixed as aforesaid for said election, and also by the publica-
273 tion of said notice once a week for at least three weeks before the time so fixed as aforesaid for said election, in the Weekly Tulare Register, a newspaper which was then published at the city of Tulare, in said county; that the notices of said election were duly posted and published in conformity with the said order and the provisions of said act, and were caused to be so posted and published by the order of said board. That at the time fixed as aforesaid for said special election, such election was in fact held in said district by the qualified electors thereof, upon the said question whether or not bonds of said district should be issued in the amount aforesaid; that said election was held and conducted in all respects in conformity with the provisions of said act; that the returns from said election from all the election precincts in said district were duly filed in the office of said board of directors; that thereafter, to wit: on the 9th day of June, 1890, the said board of directors duly canvassed the said returns and ascertained therefrom the result of said election, and then and there ascertained, found and declared as and for the result of said election; that three hundred and ninety-eight (398) legal votes were cast at said special election; that three hundred and forty-eight (348) legal votes were cast at said special election for and in favor of such issue of said bonds of said district; that fifty (50) legal votes were cast at said special election against such issue of said bonds; that a majority of the legal votes cast at said election were in favor of the issue of said bond-; and that said board caused the result of said election to be entered upon the minutes of said board. That thereafter at a regular meeting of said board of directors, to wit: on or about the 1st day of July, 1890, said board of directors

ordered that the bonds of said irrigation district in the said amount of five hundred thousand dollars, be issued in the manner and form prescribed by law; and said board of directors then and there
274 further ordered that all of said bonds should be of the denomination of five hundred dollars each and that there should be attached to each of said bonds coupons for the installments of the principal of said bonds, and for the semi-annual interest on said bonds; that said bonds should be substantially in the form, and be signed, sealed and numbered as is provided in said act; that they should bear interest at the rate of six per cent. per annum, payable semi-annually on the first days of January and July of each year; that the coupons for the interest and the coupons for the installments of the principal, should each be signed by the secretary of said board; that both the principal and interest of said bonds should be payable in the gold coin of the United States and at the office of the treasurer of said district; that said bonds should contain the recitals mentioned in said act, and also the recitals in the result of the election aforesaid, in favor of the issue of such bonds; that said bonds be made payable to the bearer thereof; that the said bonds should be dated as of the same date, and that said bonds and coupons should state the dates of their respective maturities, and should be substantially in the following forms respectively:

No. —. $500.

UNITED STATES OF AMERICA, *Tulare Irrigation District, Tulare County, State of California.*

Tulare Irrigation District, a public corporation, organized and existing under and in pursuance of the laws of the State of California, for value received, promise- to pay to the bearer hereof, at the office of the treasurer of said district, the sum of five hundred dollars, in gold coin of the United States, in installments as follows, to wit: At the expiration of eleven years, five per cent. of said sum; at the expiration of twelve years, six per cent. of said sum; at the
275 expiration of thirteen years, seven per cent. of said sum; at the expiration of fourteen years, eight per cent. of said sum; at the expiration of fifteen years, nine per cent. of said sum; at the expiration of sixteen years, ten per cent. of said sum; at the expiration of seventeen years, eleven per cent. of said sum; at the expiration of eighteen years, thirteen per cent. of said sum; at the expiration of nineteen years, fifteen per cent. of said sum, and at the expiration of the twentieth year, sixteen per cent. of said sum; said installments to be paid as provided in and only upon presentation and surrender of the installment coupons hereunto attached. Said — further promises to pay interest on said sum at the rate of six per cent. per annum, payable semi-annually, on the first day of January and July of each year, in gold coin of the United States, on presentation and surrender at the office of the treasurer of said district, of the respective interest coupons hereunto attached.

This bond is one of a series of bonds amounting in the aggregate

to five hundred thousand dollars, caused to be issued by the board of directors of said Tulare irrigation district, by authority of and pursuant to the provisions of an act of the legislature of the State of California, entitled, "An act to provide for the organization and government of irrigation districts, and to provide for the acquisition of water and other property, and for the distribution of water thereby for irrigation purposes," approved March 7th, 1887; and also by authority of and in accordance with the vote of the qualified electors of said irrigation district at a special election duly held on the 7th day of June, 1890.

The principal and interest of said bonds are to be paid out of the proceeds of annual assessments, to be levied upon the lands of the district, amounting — acres, of the present assessed value of $——.

276 In witness whereof, this bond has been signed by the president and secretary of the board of directors of said Tulare irrigation district, and the seal of said board has been affixed hereto, this — day of —— in the year one thousand eight hundred and ninety.

——— ———,
President of said Board.

[SEAL.]

——— ———,
Secretary of said Board.

$—. Installment coupon No. —.

Tulare Irrigation District will pay to bearer, at the office of the treasurer of said district, at Tulare, Tulare county, State of California, U. S. A., on —— 1, 190–, the sum of — dollars, in gold coin of the United States, being — installment of — per cent. of principal of bond No. — dated —— —, 1890. Interest on said installment will cease after maturity.

——— ———, *Secretary.*

$—. Interest coupon No. —.

Tulare Irrigation District will pay to bearer at the office of the treasurer of said district, at Tulare, Tulare county, State of California, U. S. A., on —— 1, 18—, the sum of — dollars, in gold coin of the United States, being semi-annual interest on bond No. — dated —— —, 1890.

——— ———, *Secretary.*

277 That immediately thereafter, to wit: on the 1st day of July, 1890, said board of directors ordered that one thousand bonds of said district, with the coupons thereto attached, conforming to the provisions of said act, and to the foregoing order, be prepared, executed and issued in such manner and form, in all respects that they should become and be ready for sale by said board of directors for and in behalf of said district.

That thereafter, to wit: on the 6th day of August, 1890, said board of directors, at a regular meeting thereof, by a resolution duly

adopted by and entered in the minutes of said board, declared its intention to sell said bonds to the amount of two hundred thousand dollars, on the 17th day of November, 1890, and ordered that a notice that sealed proposals would be received by said board at its office in the city of Tulare, up to the hour of one p. m. of the 17th day of November, 1890, for the purchase of said bonds last aforesaid, be published for twenty days before said day, in the following-named daily newspapers: The San Francisco Journal of Commerce, published in the city and county of San Francisco; the Sacramento Bee, published in the city of Sacramento, and the Los Angeles Express, published in the city of Los Angeles.

That none of said bonds have been sold, but all of the same remain unsold.

Wherefore, your petitioner prays that the proceedings aforesaid, for the issue and sale of said bonds of said irrigation district, may be judicially examined, approved and confirmed by this court.

J. W. DAVIS,
Attorney for Petitioner.

A. L. RHODES, *Of Counsel.*

278 (Endorsed:) No. 2329. Superior court, Tulare county. In the matter of Tulare Irrigation District. Petition for confirmation. Filed Aug. 11, 1890. John G. Knox, clerk. By ——, deputy J. W. Davis, attorney for petitioner.

In the Superior Court of the County of Tulare, State of California.

In the Matter of Tulare Irrigation District. No. —.

Upon reading and filing the petition of the Board of Directors of Tulare Irrigation District, praying that the proceedings for the issue and sale of the bonds of said district may be judicially examined, approved and confirmed by this court, it is ordered by the court that said petition be set down for hearing by the court on the 15th day of September, 1890, at the opening of the court on that day, at the court-house, in the city of Visalia in the county aforesaid, and that the clerk of this court cause a notice of the filing of said petition, to be given and published in the manner and for the time prescribed by law; that he post said notice in three public places in each election precinct in said irrigation district, for at least twenty days before said day, and that he cause said notice to be published in the Weekly Tulare Register, a newspaper in the city of
279 Tulare in said county, once a week for three successive weeks before said day; that said notice shall state the time and place as aforesaid, for the hearing of said petition and shall state the prayer of said petition, and that any person interested in the organization of said irrigation district or in the proceedings for the issue or sale of said bonds, may, on or before the day aforesaid, demur to or answer said petition.

WM. W. CROSS, *Judge.*

Aug. 11, 1890.

(Endorsed:) No. 2329 Superior court, Tulare county. In the matter of Tulare Irrigation District. Order setting petition for hearing, and directing to be given. Filed Aug. 11, 1890. John Cutler, Jr., clerk By —— —— deputy. Recorded Aug. 13, 1890.

Affidavit of Publication.

STATE OF CALIFORNIA, } ss:
County of Tulare, }

Miles Ellsworth being duly sworn, upon his oath, deposes and says:

My name is Miles Ellsworth. I am a resident of the county of Tulare, State of California, and am over the age of twenty one years. I am now and ever since the 1st day of August, 1890, have been, one of the editors, printers and publishers of the Weekly Tulare Register, a newspaper printed and published in Tulare, in said Tulare county, and as such had charge of all the advertisements pub-
280 lished in said newspaper since said 1st day of August, 1890, and I further state that the notice of hearing petition of which the copy annexed on the margin hereof is a true printed copy, which printed copy is hereby referred to and made part hereof, was published in said newspaper once each week for five successive weeks, the said notice being in each number of the regular and entire issue, and not in any supplement thereof, and during each and all the times specified as follows, to wit: In the issue of August 15th, 1890; in the issue of August 22nd, 1890; in the issue of August 29th, 1890; in the issue of September 5th, 1890; in the issue of September 12, 1890.

MILES ELLSWORTH.

Subscribed and sworn to before me this 13th day of September, 1890.

J. W. DAVIS,
[SEAL.] *Notary Public, Tulare Co., Cal.*

(For printed notice referred — in above affidavit, see next page.) (Clerk.)

Notice of Hearing of Petition.

In the Superior Court of the County of Tulare, State of California.

In the Matter of Tulare Irrigation District.

Notice is hereby given that the petition of the Board of Directors of Tulare Irrigation District, praying that the proceeding for the issue and sale of the bonds of said district may be judicially examined, approved and confirmed by said court, was on the 11th day of August, 1890, filed in said court; that said court fixed as the time for the hearing of said petition, the 15th day of September, 1890, at the opening of the court on that day, at the court-house in the city

of Visalia, county of Tulare; and notice is further given
281 that any person interested in the organization of said district, or in the proceedings for the issue or sale of said bonds may on or before the day last above mentioned demur to or answer said petition.

By order of the court.

Attest:

[SEAL.] JOHN G. KNOX, *Clerk.*

(The foregoing is the copy of the printed notice referred — in the affidavit.) (Clerk.)

(Endorsed:) No. 2329. Superior court, county of Tulare. In the matter of Tulare Irrigation District. Proof of publication of notice of hearing petition for confirmation. Filed Sept. 15, 1890. John G. Knox, clerk. J. W. Davis, attorney for petitioner.

282 *Notice of Hearing of Petition.*

In the Superior Court of the County of Tulare, State of California.

In the Matter of Tulare Irrigation District.

Notice is hereby given, that the petition of the Board of Directors of Tulare Irrigation District, praying that the proceeding for the issue and sale of thr bonds of said district may be judicially examined, approved and confirmed by said court, was on the 11th day of August, 1890, filed in said court; that said court fixed as the time for the hearing of said petition, the 15th day of September, 1890, at the opening of the court on that day, at the court-house in the city of Visalia, county of Tulare; and notice is further given, that any person interested in the organization of said district, or in the proceedings for the issue or sale of said bonds, may, on or before the day last above mentioned, demur to or answer said petition.

By order of the court.

Attest:

[SEAL.] JOHN G. KNOX, *Clerk.*

(The foregoing is a copy of the notice referred — in the following annexed affidavit.) (Clerk.)

283 STATE OF CALIFORNIA, } ss:
County of Tulare, }

Edward Oakford, being duly sworn, says:

I am and at all times hereinafter mentioned was, secretary of the board of directors of Tulare irrigation district; on the 19th day of August, 1890, I posted notices of hearing of petition of which the annexed is a true copy in three public places in each election precinct in said district, to wit:

In precinct No. 1.—On fence along public road on southwest quarter of section 36, township 19 south, range 24 east of Mount Diablo meridian: on fence along public road on southwest quarter

of section 6, township 20 south, range 25 east of Mount Diablo meridian; and on fence along public road at northeast corner of the northeast quarter of section 13, township 20 south, range 24 east of Mount Diablo meridian.

In precinct No. 2.—On gate post at east side of public road on west side of southwest quarter of section 22, township 19 south, range 24 east of Mount Diablo meridian; on fence along public road, at northeast corner of northwest quarter of said section 32, said township and range, and on stake near the intersection of public roads on the southeast corner of lot number 20, in Russell colony.

In precinct No. 3.—On an oak tree at south side of public road on northeast quarter of section 11, township 20 south, range 23 east of Mount Diablo meridian; on fence at south side of public road on section 24, said township and range, and on fence along public road at southeast corner of the southeast quarter of section 16, township 20 south, range 24 east of Mount Diablo meridian.

Precinct No. 4.—On bulletin-board at the post-office; on awning post in front of Grand hotel, on Front street; and on bulletin-
284 board in front of city clerk's office on Kern street, all in the city of Tulare.

In precinct No. 5.—On fence along public road on north side of northwest quarter of section 30, township 20 south, range 24 east of Mount Diablo meridian; on fence along public road on east side of east half of section 32, said township and range; and on fence post on east side of public road on section 27 said township and range.

In addition to the above, I posted one of the said notices in the office of the board of trustees of said district, in the city of Tulare.

EDWARD OAKFORD.

Subscribed and sworn to before me this 8th day of September, 1890.

J. W. DAVIS,
Notary Public, Tulare County, Cal.

[SEAL.]

(For printed notice referred to in above affidavit see next page.) (Clerk.)

(Endorsed:) No. 2329. Superior court, county of Tulare. In the matter of Tulare Irrigation District. Proof of posting notice of hearing. Petition for confirmation. Filed Sept. 15, 1890. John G. Knox, clerk.

In the Superior Court of the County of Tulare, State of California.

In the Matter of Tulare Irrigation District.

This cause having been regularly brought on to hearing before said court on the 15th day of September, 1890, the said board of directors appearing by J. W. Davis, its attorney, and A. L.
285 Rhodes, as counsel, no person having demurred to or answered said petition herein filed, or appeared in opposition thereto;

And the evidence being heard and the cause being submitted to the court for its decision, the court now finds the following facts and conclusions of law in the cause.

1st. That on the 11th day of August, 1890, the said court ordered the petition herein to be set down for hearing on the 15th day of September, 1890, at the opening of court on that day, at the court-room of said county, at the city of Visalia, in said county, and that the clerk of this court cause a notice of the filing of said petition, to be given and published in the manner prescribed by law, to wit: by the publication of said notice once a week for three successive weeks before the said 15th day of September, 1890, in the Weekly Tulare Register, a newspaper published in the city of Tulare in said county, and also by posting such notices for at least twenty days before the said 15th day of Septomber, 1890, in three public places in each of the election precincts of said district, and that said notice should state the time and place as aforesaid, for the hearing of said petition and the prayer of said petition-, and that any person interested in the organization of said district, or in the proceedings for the issue or sale of said bonds, may, on or before the day aforesaid, demur to or answer said petition.

2nd. That said notice was duly given and published in conformity with law, and with said order of said court.

3rd. That on or about the 2nd day of September, 1889, the said irrigation district was duly organized by and under the directions of the board of supervisors of said county, and that the first board of directors of said irrigation district was duly elected on or about the 24th day of August, 1889. That an order of said board of supervisors directing a certified copy of said order for the organization of said district to be filed for record in the office of the
286 recorder of said county, was duly made by said board of supervisors on the said 2nd day of September, 1889, but said order was not entered on the minutes of said board for said day, but was, by an order of said board made on the 8th day of July, 1890, ordered to be entered *nunc pro tunc* and was so entered, that all the proceedings of said board of supervisors under and by virtue of which said irrigation district was organized, and the said first board of directors of said district were elected, were and are, legal and regular.

4th. That said board of directors, within the time prescribed by law, duly qualified and thereupon entered — the discharge of their duties. That thereafter, at the time and in the manner prescribed by law, the present board of directors was duly elected, and thereupon duly qualified and entered upon the discharge of their duties.

5th. That all the lands in said district are situated within said county of Tulare, and the said office of said board of directors is required to be kept, and in fact is kept, at the city of Tulare, in said county.

Sixth. That the board of directors of said district, as soon as practicable after the organization of said district, to wit: on or about the 18th day of May, 1890, at a regular meeting thereof, estimated

and determined the amount of money necessary to be raised by said district, for the purpose of constructing the canals and works which were necessary for the irrigation of the lands of said district, and for the purpose of acquiring for said district the property, water and water rights that would be necessary therefor; that the said board of directors then and there estimated that the sum of five hundred thousand dollars ($500,000) was necessary to be raised for the purposes aforesaid; and determined that it was necessary and proper that the bonds of said district to the amount of five hundred
287 thousand dollars ($500,000.00) be issued by said district and that the same be sold, in order to raise the amount of money necessary for said purposes, provided the qualified electors of said district should vote in favor of the issue of said bonds.

7th. That thereupon the said board immediately called a special election, to be held in said district for the purpose, at the time and in the manner mentioned in the petition herein, and then ordered that notice of such election be given for the time and in the manner mentioned in said petition.

8th. That said special election was held in said district at the time and in the manner prescribed in said order and notice, upon the question whether the bonds of said district should be issued in the amount aforesaid; that said election was held and conducted in all respects in conformity with the provisions of said act; that the returns of said election were duly made, as mentioned in said petition; that said board of directors canvassed the returns of said election, in the manner mentioned in said petition, and therefrom ascertained and declared that a majority of all the legal votes cast at said election, were in favor of such issue of the bonds of said district.

9th. That thereafter the said board of directors, at a regular meeting thereof, ordered that the bonds of said district, in the amount of five hundred thousand dollars ($500,000) be issued in the manner and form prescribed by law; that all of said bonds be of the denomination of five hundred dollars ($500) each; that there should be attached to each of said bonds, coupons for installments of the principal of said bond-, and for the semi-annual interest thereon; that said bonds should be substantially in the form and signed, sealed and numbered as provided in said act; that they should bear interest at the rate of six (6) per cent. per annum, payable semi-annually; that the coupons for the installments of
288 the principal should be signed by the secretary of said board, and that the principal and interest of said bonds should be payable in gold coin of the United States, at the office of the treasurer of said district; that the said bonds should contain the recitals mentioned in said act, and also the recital of the result of the election aforesaid; that said bonds be payable to bearer thereof and be dated as of the same date, and that said bonds and coupons should state the dates of their respective maturities and should be substantially in the forms respectively mentioned in said petition.

10th. That immediately thereafter, to wit: on the 1st day of July, 1890, said board of directors ordered that one thousand (1,000) bonds

of said district, with the coupons thereto attached, conforming to the provisions of said act and the orders above mentioned, be prepared, executed and issued, in such manner and form in all respects, that they should become and be ready for sale by said board of directors, for and in behalf of said district.

11th. That thereafter, to wit: on the 6th day of August, 1890, said board of directors at a regular meeting thereof, by a resolution duly adopted by and entered in the minutes of said board, declared its intention to sell the said bonds to the amount of two hundred thousand dollars, ($200,000) on the 17th day of November, 1890, and ordered that a notice that sealed proposals would be received by said board at the time and place mentioned in said petition; that none of said bonds have yet been sold, but all of the same remain unsold.

Conclusions of Law.

From the foregoing facts, the court finds the following conclusions of law:

1st. That the said Tulare Irrigation District was duly
289 and regularly organized as an irrigation district and from the time of its organization to the present time, has been and now is a legal and valid irrigation district, and that all the proceedings for its organization are entitled to approval and confirmation by this court.

2nd. That the proceedings of the board of directors of said district in providing for and authorizing the issue and sale of the bonds of said district, to the amount of five hundred thousand dollars ($500,000) including the election held in said district, at which election the question whether the bonds of said district in the said amount, should be issued, was submitted to the qualified electors of said district, are legal and valid and entitled to approval and confirmation by the court.

3rd. That the proceedings, orders and resolutions of said board, for the issue of the bonds of said district, to the amount of five hundred thousand dollars ($500,000) as above recited, and the order prescribing the form of such bonds, and the order for the sale of such bonds, to the amount of two hundred thousand dollars ($200,000) as above recited, are legal and valid, and entitled to approval and confirmation by the court.

4th. That said board of directors is entitled to a judgment approving and confirming all the proceedings aforesaid mentioned in said petition.

Ordered that judgment be entered accordingly.

WM. W. CROSS, *Judge.*

(Endorsed:) No. 2329 Superior court, county of Tulare, State of California. In the matter of Tulare Irrigation District. Findings. Filed Sept. 15, 1890. John G. Knox, clerk.

290 In the Superior Court of the County of Tulare, State of California.

In the Matter of Tulare Irrigation District.

This cause came on regularly for hearing before said court on the 15th day of September, 1890, the said board of directors appearing by J. W. Davis, as its attorney, and A. L. Rhodes, as counsel, no person having demurred to or answered said petition herein filed, or appeared in opposition thereto, and it appearing that said court, on the 11th day of August, 1890, ordered that the petition herein be set down for hearing on the 15th day of September, 1890, at the opening of court on that day, at the court-room of said court, at the city of Visalia, in said county, and that the clerk of said court caused a notice in the form prescribed by law, of the filing of said petition to be given and published in the manner prescribed by law; and it further appearing that said notice has been duly given and published for the time and in the manner prescribed by law, and pursuant to said order, to wit: by the publication of said notice once a week for three successive weeks before said 15th day of September, 1890, in the Weekly Tulare Register, a newspaper published in the city of Tulare, in said county, the office of said board of directors being required to be kept, and having ever since the organization of said district had been kept in said county, and also by posting of such notices for at least twenty days before the said 15th day of September, 1890, in three public places in each of the election precincts of said district. And this cause having been tried on said 15th day of September, 1890, by the court without a jury, and the testimony, both oral and documentary having been heard, and the cause having been submitted to the court for decision, and the court having made and filed its findings of fact and con-
291 clusions of law, and its order of confirmation, and ordered that judgment be entered in accordance therewith, in favor of said petitioners.

Wherefore, by reason of the law and the findings, and order aforesaid, it is ordered, adjudged and decreed, that the said Tulare irrigation district was duly organized by and under the directions of the board of supervisors of said county, on or about the 2nd day of September, 1889; that the first board of directors of said irrigation district was duly elected; and that all the proceedings of said board of supervisors, under and by virtue of which said irrigation district was organized, and the first board of directors of said district was elected, be and the same are hereby approved and confirmed.

And it is further ordered, adjudged and decreed, that all the proceedings had by or under the authority and direction of said board of directors, for the purpose of the issue of the bonds of said district, to the amount of five hundred thousand dollars ($500,000) including in said proceedings the estimate made by said board of directors mentioned in said petition, of the amount of money, necessary to be raised for the purpose of constructing the necessary canals and works, and acquiring the necessary property therefor, and

otherwise carrying out the provisions of the said act, under which said district was organized; and including in said proceedings the election mentioned in said petition, which was called and held, upon the question whether the bonds of said district, in the amount aforesaid, should be issued; and also including in said proceedings the order of said board of directors that the bonds of said district in said amount, be issued by said board, in the manner and form prescribed by said act; and also including the form of said bonds, and the coupons thereto attached, be and the same are hereby approved and confirmed.

And it is further ordered, adjudged and decreed that the
292 said Tulare irrigation district, ever since its organization, as aforesaid, has been and now is, a duly and legally organized irrigation district, and that it possesses full power and authority to issue and sell, from time to time, the bonds of said district, to the amount of five hundred thousand dollars ($500,000) and it is ordered that said petitioner pay the costs of this proceeding.

WM. W. CROSS, *Judge.*

(Endorsed:) No. 2329 Superior court, county of Tulare, State of California. In the matter of Tulare Irrigation District. Judgment. Decree entered Sept. 15, 1890. Decrees vol. 1, page 568. Filed Sept. 15, 1890. John G. Knox, clerk.

And to said offer of said judgment-roll, said defendant and said intervenors, then and there objected on the grounds:

That the testimony offered is irrelevant, incompetent and immaterial, and that the statute of the State of California, under the provisions of which the bonds in suit are claimed to have been issued, is void, invalid and unconstitutional, as being an attempt to take property and impose obligations without due process of law, and that said statute deprives defendant and the land-owners of such district of the equal protection of the law.

That said statute does not provide for any hearing of or any day in court on the question of the formation of said irrigation district, and that the notice called for by said statute of the hearing
293 on the petition for the formation of such district, was not, nor was any other notice given; and that the notice claimed to have been given was no notice whatever, and as such was null and void, within the decision of the supreme court of the State of California, in the case of *In re* Central Irrigation District reported in the 117 Cal. Reports at page 382, and such notice was not published and does not purport to be published by authority of law, or by any one authorized to give such notice.

That defendant is not estopped to deny that said district was not duly organized or that the law was not complied with in regard to the formation thereof, and that it never had any legal existence.

That the recitals in said bonds cannot cure any defects in the proceedings leading to the issue thereof, and that said bonds are invalid, even in the hands of holders for value, and that the holders of said bonds cannot rely on said recitals, but are bound by and affected

with notice of any and all defects and irregularities, shown by the record and proceedings of said district, and are affected with constructive notice thereof; and that said records and proceedings show that said bonds are invalid in the following particulars and for the following reasons, viz:

1. That no notice was given by the board of supervisors of the county of Tulare of the election called by them, for the formation of said Tulare irrigation district.

2. That said board of supervisors did not declare the territory voted for, an irrigation district, and did not cause a copy of any order of said board declaring said district organized, as an irrigation district, duly certified or otherwise, to be filed for record in the office of the county recorder of said Tulare county.

3. That the board of directors of said Tulare irrigation
294 district, prior to the issuance of the bonds in suit, did not estimate or determine the amount of money necessary to be raised for the construction, use, supply, maintenance repairs and improvements, of the canals or works, or requiring the necessary property or rights therefor.

4. That the petition for the confirmation for the issuance and sale of the bonds in suit, the lands claimed to be in said proposed district and affected by said bonded indebtedness was not described, nor in any manner referred to so that a land-owner in said district could ascertain therefrom that the lands owned by him were affected thereby.

5. That by the order of the board of supervisors attempting to establish and define the boundaries of said Tulare irrigation district, said board so established and defined such boundaries that said district comprises, embraces and is composed of four separate and distinct bodies of land, not contiguous to each other, and which taken together, did not and do not form one body of land, and is not such a body of land as is intended by said act of the legislature to be formed into an irrigation district.

6. That none of said bonds in suit bear date of the day of their issuance, nor do said bonds conform in any respects to the said act of the legislature. That all of said bonds are dated July 1st, 1890, whereas none of the bonds in this action were issued earlier than May, 1891, and a greater portion thereof were issued between March, 1892, and February 1893, and that each and all of said bonds are made payable twenty years from said July 1st, 1890, and not twenty years from the dates of their respective issuance.

That by the law of California, the officers of said district had no power to make any recitals in said bonds curing said defects and that such recitals do not cure the same.

That the confirmation proceedings were void and without due or
any process of law, and that no proper or any notice thereof,
295 was given; and that until said district was duly organized, no such proceedings could be had, and that the statute providing for such confirmation proceeding is unconstitutional as not affording equal protection of the law or due process of law, as provided by the 14th amendment to the Constitution of the United

States, and is also void as special legislation under the constitution of California, and that the notice prescribed by said statute, was not given and said statute does not provide for due process of law.

That the statute of the State of California, under which said confirmation proceedings were attempted to be had, was and is unconstitutional and void, and in controvention to the 14th amendment to the Constitution of the United States, as attempting to deprive parties of property without due process of law. That the said proceeding was not a judicial proceeding, nor valid as such, nor did the statute provide for, nor was there given any due or sufficient notice, or such as would constitute due process of law, or render the judgment or decision of the court binding upon any party.

That it is not shown that the notice required by section 2 of the statute of California, approved March 7th, 1887, entitled, "An act to provide for the organization and government of irrigation districts," etc., was ever given, nor that the petition in regard to the formation of the defendant district was published for at least two weeks before the time at which the same was to be presented, or was published, together with a notice stating the time of the meeting at which the same would be presented, or with a notice such as was provided for by said section 2, as construed in the Central case in 117 Cal. 382, and that the irrigation district, in the absence of such notice and compliance with the statute, and the attempt to create the same, was wholly void *ab initio*, as being created without warrant of law, and that no proof of the *de facto* existence of
296 such corporation could be substituted for its *de jure* existence, by virtue of such compliance with the statute, so as to uphold any of the subsequent proceedings, or the issuance of bonds, as against the defendant herein, or the intervenors herein.

That the legislature of the State of California could not constitutionally empower the board of supervisors conclusively to determine the question, whether such due notice of the presentation of said petition had been given, nor could the legislature make the decisions of the board of supervisors conclude the judicial question of the giving of said notice, in compliance with said statute. And that the statute of 1889, of the State of California, providing for said confirmation proceedings, was unconstitutional and void, and in violation of the 14th amendment to the Constitution of the United States, in so far as it attempted, or shall be construed to attempt to provide other than the customary or required process usual in ordinary judicial proceedings *inter partes* in such confirmation proceedings, and in so far as it is attempted to substitute for such process and due process of law, a mere posting and publication, as provided for in said statute; that the legislature had no power and the statute, if construed to attempt to exercise the power by rendering said confirmation decree conclusive evidence of the due formation of said district, would be unconstitutional and opposed to said 14th amendment to the Constitution of the United States.

That in the absence of due notice of the presentation of the petition for the formation of the district, under the decision in said

Central case, 117 Cal. 382, there was no corporation which had any legal right to bind the land-owners of the land, or to affect it in any way, and no determination that the land was benefited and ownership and title of and to the land remained utterly unaffected by any of the proceedings attempted.

That the said confirmation proceeding is not judicial, but simply executive, and whatever its form, was a mere *ex parte* case,
297 and as it could not bind the bondholders, so, for lack of mutuality, it cannot bind the land-owners; in fact, it binds no one.

That the petition did not, nor did the notice posted and published of the filing thereof, in any manner describe the territory embraced within the alleged district, or in any manner identify the boundaries of such district, and that it appears on the face of the record, that the notice of the filing of the petition was not posted by the clerk of the court, or any deputy of his, but that the same was posted by a private individual without authority of law.

And further, that said statute under which said confirmation proceeding was instituted, is unconstitutional and void, and contrary to the provision of the 14th amendment to the Constitution of the United States, in that it denied to parties the equal protection of the law, and that said statute constituted and was class legislation within the meaning of said 14th amendment.

And thereupon, the court overruled the said objections and admitted the said judgment-roll in evidence, to which ruling the said defendant and said intervenors, each and severally, and respectively, then and there duly excepted. (Exception No. 2.)

Thereupon, the said counsel for plaintiff introduced the stipulation in writing, duly signed by the counsel of all the parties hereto, wherein it was stipulated and agreed, that the allegations of the complaint in intervention should be deemed and considered to be denied, which stipulation was duly approved by this court and filed herein.

Thereupon, the plaintiff offered and read in evidence from the deposition of a witness, E. Oakford, duly taken and filed herein, the testimony of said witness that he would know coupon No. 12, falling due July 1st, 1896, detached from bond No. 400, if shown to him. Thereupon, the counsel showed to the witness the said coupon No. 12, detached from said bond No. 400
298 and formerly attached to it, which said coupon so shown to the witness, was in the words and figures following, to wit:

$15.00. Interest coupon No. 12.

Tulare Irrigation District will pay to bearer, at the office of the treasurer of said district at Tulare, Tulare county, State of California, U. S. A., on July 1st, 1896, the sum of fifteen dollars, in gold coin of the United States, being semi-annual interest on bond No. 400, dated July 1st 1890.

E. OAKFORD, *Secretary.*

And the witness thereupon testified that that was coupon No. 12 formerly attached to said bond.

The witness further testified that the twelve coupons detached from said bond, including the one shown, No. 12, were in the same form as coupon No. 13, still annexed to said bond, with the exception of being numbered on the upper right-hand corner and on the back, with the numbers from one to twelve respectively, and with the exception that they fell due respectively, semi-annually, commencing January 1st, 1891, and ending July 1st, 1896.

The witness further testified that he saw said bond as originally printed, with all the coupons attached thereto, as originally printed, and that there were twelve coupons originally attached to said bond as printed, and now detached, in the same form as coupon No. 13, still attached to said bond, with the exceptions above stated; that those said twelve coupons which were formerly attached to said bond, but which were now detached were numbered from one to twelve respectively and that this bond numbered 400 then shown to the witness, and of which as then shown to the witness, Exhibit A attached to the complaint herein, is a true copy, purports upon its face to have been one of a series of bonds and in that series there were one thousand of those bonds for $500 each, and that the entire
299 series of one thousand bonds had the same coupons printed and attached thereto, with the exception of the number at the lower left-hand corner, in red ink, as were printed and attached to printed bond No. 400, and that that series of one thousand bonds was numbered from one to one thousand, inclusive; and that the coupons wereattached to each bond numbered with the number of the bond, attached thereto in the lower left-hand corner, in red ink, and that the coupons of each bond bore the witness's lithographic signature, as secretary, on the same, as the coupons attached to bond numbered 400, and that each of said one thousand bonds was signed by the witness as secretary of the board of directors of said irrigation district, and by J. W. Mackie, as president of said board, and that the witness attached the seal of the board of directors to each of said bonds, and that each of said bonds was so signed and sealed before the same was issued or disposed of by said board of directors, and before the same went out of their possession, and that the parties signing each of said bonds, as president and secretary of said board of directors, were the acting president and secretary of said board of directors at the time each of said bonds was signed respectively by them, and that all those one thousand bonds were in the same form, with the exceptions of the numbers thereon.

And thereupon, the defendant and intervenors offered in evidence the 13th paragraph of the said stipulation, filed on the 29th day of March, 1900, and the facts therein set forth, together with Exhibit B, therein referred to. And thereupon plaintiff objected to the admission in evidence of each of the facts aforesaid, on the ground that each of said facts is immaterial, irrelevant and incompetent, and on the same ground objected to the introduction of said Exhibit B, annexed to said stipulation of March 29th, 1900; which

objection was by the court, sustained, and said facts and the
300 evidence thereof excluded to which ruling the defendant and intervenors then and there each and severally, and respectively, duly excepted. (Exception No. 3.)

And thereupon, the defendant and intervenors, offered in evidence the facts set forth in paragraph 14 of said stipulation, filed March 29th, 1900, and Exhibit C, therein referred to, to which offer and to the admission of the facts and the exhibit mentioned in said paragraph 14 of said stipulation of March 29th 1900, the plaintiff objected, on the same grounds last above specified as the grounds of his objection to the offer of paragraph 13, and said Exhibit B, which objection was sustained by the court, and said facts and exhibit specified in said paragraph 14, were excluded from the evidence, to which ruling of the court the defendant and intervenors, each and severally, and respectively, then and there duly excepted. (Exception No. 4.)

And thereupon, the said defendant and intervenors offered in evidence paragraph 15 of said stipulation, filed March 29th, 1900, and all the facts and the order and Exhibit D therein mentioned; to which offer the plaintiff objected, on the same grounds upon which he objected to the other offers made by the defendant and intervenors, and the court sustained the said objection, and to such ruling the defendant and intervenors then and there each and severally and respectively, duly excepted. (Exception No. 5.)

And thereupon, the defendant and intervenors, offered in evidence the facts and Exhibit E, mentioned in paragraph 16 of said stipulation, filed March 29th, 1900; to which offer, facts and exhibit, the plaintiff objected, on the same grounds above specified, as his objections to the previous offers of defendant and intervenors, and said objection was sustained by the court, and said facts and exhibit excluded, to which ruling, defendant and intervenors, each and severally, and respectively, then and there duly excepted. (Exception No. 6.)

301 Thereupon, the defendant and intervenors offered in evidence, the facts set forth in paragraph 17 of said stipulation, filed March 29th, 1900, to which offer the plaintiff objected, on the same grounds specified by him, as to the other previous offers of defendant and intervenors, and said objection was sustained by the court and said facts excluded, to which ruling the defendant and intervenors each and severally, and respectively, then and there duly excepted. (Exception No. 7.)

And thereupon, the defendant and intervenors offered in evidence the facts and exhibit mentioned in paragraph 18 of said stipulation, filed March 29th, 1900, to which offer the plaintiff objected, on the same grounds above specified, to the previous offers of the defendant and intervenors, and the court sustained the said objection and excluded said offered evidence and facts, to which ruling the defendant and intervenors, each and severally, and respectively, then and there duly excepted. (Exception No. 8.)

And thereupon, the said defendant and intervenors offered in evidence the facts mentioned in paragraph 19 of said stipulation, filed

March 29th, 1900, to which offer the plaintiff objected, on the same grounds specified to the previous offers of defendant and intervenors, and the court sustained said objection, and excluded said facts and the evidence so offered, to which ruling the said defendant and intervenors, each and severally, and respectively, then and there duly excepted. (Exception No. 9.)

And thereupon, the defendant and intervenors offered in evidence the facts set forth in paragraph 20 of said stipulation filed March 29th, 1900, to which offer and facts plaintiff objected, on the same grounds above specified to the previous offers by defendant and intervenors, and said objection was sustained by the court, and said facts and evidence excluded, to which ruling the defendant
302 and intervenors, each and severally, and respectively, then and there duly excepted. (Exception No. 10.)

And that afterwards, on the same 29th day of March, 1900, all, the parties hereto, plaintiff, defendant, and intervenors, by their respective attorneys duly made and signed, and there was filed herein a stipulation in writing, in the words and figures following, to wit:

It is hereby stipulated by all parties hereto, that the following are facts, and on the trial of this action, they, or any of them, may be offered in evidence as facts, by any party to this action, and when so offered the party not offering the same may object to such facts or any of them being admitted in evidence upon any legal grounds that may exist against their admissibility.

That on the 6th day of May, 1890, one P. J. Flynn, a civil engineer in the employ of the defendant, made a report to the board of directors of the defendant district, at which time it was ordered by said board, that two thousand copies of said report, and other information, be published. That at a meeting of said board held on the 8th day of May, 1890, it was ordered that it was the sense of said board, that five hundred thousand dollars of the bonds of said district be issued, a copy of which resolution is hereunto annexed marked "Exhibit F."

That on the 12th day of May, 1890, the report of the special committee appointed to write up proceedings of the said board of directors, with reference to securing water, was read and ordered adopted, and it was further ordered that the report of the committee adopted and signed by the board on that day, be made part of and be published with the pamphlet containing said Engineer Flynn's report, which reports, together with the report of one John S. Urton, a civil engineer, made to said board on October 29th, 1889, are contained in the printed pamphlet hereto annexed, marked "Fxhibit H."

That on May 12th, 1890, the said board adopted and
303 ordered printed upon the minutes of said board, the order testified to by the witness, E. Oakford, in his deposition taken herein, a copy of which resolution is hereunto annexed, marked "Exhibit I." That no estimate of the amount of money necessary to be raised for the purposes of constructing any proposed system of irrigation for said district, was ever entered on the minutes of said board, except as set forth in said orders and resolutions hereinbefore mentioned.

304–373 "EXHIBIT F."

"It was moved by Director Gibson and seconded by Director Cartmill, that it is the sense of the board of directors, of Tulare irrigation district, that an election be called in the district to submit the proposition of bonds being issued to the amount of five hundred thousand dollars, for the purpose of constructing necessary canals, ditches, etc., and for purchasing water rights and for the distribution of water throughout the district. The motion was carried by the following vote: Ayes, Directors Gibson, Merritt and Cartmill; noes Director De Witt."

374 "EXHIBIT I."

"On motion of Director Gibson, seconded by Director Cartmill, it was ordered that the following resolution and order, to wit: Be it by the board of directors of Tulare irrigation district, and it is by said board hereby resolved, estimated and determined, that the amount of money necessary to be raised under and pursuant to the provisions of the act of the legislature of the State of California, entitled 'An act to provide for the organization and government of irrigation districts, and to provide for the acquisition of water and other property, and for the distribution of water thereby, for irrigation purposes,' approved the 7th day of March in the year 1887, for the purpose of constructing necessary irrigating canals and works, and acquiring the necessary property and rights therefor, and otherwise carrying out the provisions of said act in and for said district, is the sum of five hundred thousand dollars ($500,000). And it is by said board further hereby resolved and ordered that a special election in said Tulare irrigation district, be and the same is hereby called, at which shal-, be submitted to the electors of said district possessing qualifications" etc., without continuing with the balance of the resolution I will ask you if that was a part, that part I have read was a part of a resolution that was passed that day by the board of directors? A. Yes, sir.

Q. 40. I also find in the book on page 24, under date of May 6th, the following: (Reading) "The report of P. J. Flynn, civil engigineer, setting forth the result of the surveys for reservoirs and canals, together with estimated cost of construction and recommendations, was read, and upon motion of Director Mackie, seconded by Director Merritt, it was ordered that that report be accepted, subject to additions and corrections, and placed on file.

On motion of Director Mackie, seconded by Director Merritt, it was ordered that two thousand copies of the engineer's re-
375 port and such other information as may be of value to the people of the district, be printed in pamphlet form for general distribution."

376 And on the trial of this action, to wit: on the 13th day of April, 1900, aforesaid, the defendant and intervenors offered

in evidence the facts set forth in said last-mentioned stipulation and pamphlet, "Exhibit H," therein referred to, to which offer the plaintiff objected upon the same grounds hereinabove set forth, as made to other previous offers made by defendant and intervenors, and the court sustained said objection, and excluded said offer, facts and Exhibit H, to which ruling of the court, the defendant and intervenors, each and severally, and respectively, then and there duly excepted. (Exception No. 11.)

And thereupon, and on said trial on said 13th day of April, 1900, the defendant and intervenors offered in evidence a certified copy of the judgment-roll in the matter of Tulare Irrigation District, in the superior court of the county of Tulare, No. 2329, which judgment-roll was duly certified by the clerk of the court, on the 14th day of October, 1899, and which said judgment-roll is in the words and figures following, to wit:

In the Superior Court of the County of Tulare, State of California.

In the Matter of Tulare Irrigation District. No. —.

To the superior court of the county of Tulare, State of California:

The petitioner, The Board of Directors of Tulare Irrigation District, respectfully represents:

That said irrigation district was, on or about the 2nd day of September, 1889, duly organized as an irrigation district by the board of supervisors of said county, under and in pursuance of an
377 act, entitled, "An act to provide for the organization and government of irrigation districts, and to provide for the acquisition of water and other property, and for the distribution of water thereby for irrigation purposes," approved March 7th, 1887; that ever since its organization it has claimed in good faith to be, and has existed as, an irrigation district.

That the first board of directors of said irrigation district was duly elected under and in pursuance of the provisions of said act.

That thereafter, at an election held in said district on the 2nd day of April, 1890, J. W. Mackie, A. P. Merritt, W. B. Cartmill, E. De Witt, and J. F. Gibson, were duly elected as members of the board of directors of said district, and thereupon duly qualified as such, and ever since their said qualification as such they have constituted and still constitute the board of directors of said irrigation district.

That all the land of said district and embraced within its boundaries, are situated within said county of Tulare; and that the office of the board of directors of said district is required to be kept, and in fact is kept, at the city of Tulare in said county.

That the board of directors of said district, as soon as practicable after the organization of said district to wit: on or about the 12th day of May, 1890, at a regular meeting thereof, estimated and determined the amount of money necessary to be raised by said district, for the purpose of constructing the canals and works which were necessary for the irrigation of the land of said irrigation dis-

trict, and for the purpose of acquiring for said district the property, water and water rights which would be necessary therefor; that said board of directors then and there estimated that the sum of five hundred thousand dollars was necessary to be be raised for the purpose aforesaid; and that said board determined that it was
378 necessary and proper that bonds of said district to the amount of five hundred thousand dollars ($500,000), in all respect-conforming to the provisions of said act, be issued by said district, and that the same be sold in order to raise the amount of money necessary for said purposes, provided the qualified electors of said district should vote in favor of the issue of such bonds.

That thereupon said board immediately called a special election to be held in said district, by the electors of said district, who possessed the qualifications prescribed by said act, at which election there should be submitted to them the question whether or not such bonds of said district should be issued in the amount so determined by said board; and then and there ordered said special election to be held on Saturday, the 7th day of June, 1890; and then and there ordered that notice of said election be given by posting notices thereof in each election precinct in said district, for at least twenty days before the time fixed as aforesaid for said election, and also by the publication of said notice once a week for at least three weeks before the time so fixed as aforesaid for said election, in the Weekly Tulare Register, a newspaper which was then published at the city of Tulare, in said county; that the notices of said election were duly posted and published in conformity with the said order, and the provisions of said act, and were caused to be so posted and published by the order of said board.

That at the time fixed, as aforesaid, for said special election, such election was in fact held in said district by the qualified electors thereof, upon the said question whether or not bonds of said district should be issued in the amount aforesaid; that said election was held and conducted in all respects in conformity with the provisions of said act; that the returns from said election from all the election precincts in said district were duly filed in the office of said board of directors; that
379 thereafter, to wit: on the 9th day of June, 1890, the said board of directors duly canvassed the said returns, and ascertained there from the result of said election, and then and there ascertained, found and declared as and for the result of said election, that three hundred and ninety-eight (398) legal votes were cast at said special election; that three hundred and forty-eight (348) legal votes were cast at said special election for and in favor of such issue of said bonds of said district; that fifty (50) legal votes were cast at said special election against such issue of said bonds; that a majority of the legal votes cast at said election were in favor of the issue of said bonds; and that said board caused the result of said election to be entered upon the minutes of said board; that thereafter, at a regular meeting of said board of directors, to wit: on or about the 1st day of July, 1890, said board of directors ordered that the bonds of said irrigation district, in the said amount of five

hundred thousand dollars, be issued in the manner and form prescribed by law, and said board of directors then and there further ordered that all of said bonds should be of the denomination of five hundred dollars each, and that there should be attached to each of said bonds, coupons for the installments of the principal of said bonds, and for the semi-annual interest on said bonds; that said bonds should be substantially in the form, and be signed, sealed and numbered, as is provided in said act; that they should bear interest at the rate of six per cent. per annum, payable semi-annually, on the first days of January and July of each year, that the coupons for the interest, and the coupons for the installments of the principal, should each be signed by the secretary of said board; that both the principal and interest of said bonds should be payable in the gold coin of the United States, and at the office of the treasurer of said district; that said bonds should contain the recitals mentioned in said act; and also the recitals in the result of the election
380 aforesaid, in favor of the issue of such bonds; that said bonds be made payable to the bearer thereof; that the said bonds should be dated as of the same date, and that said bonds and coupons should state the dates of their respective maturities, and should be substantially in the following forms respectively:

No. —. $500.

UNITED STATES OF AMERICA. *Tulare Irrigation District, Tulare County, State of California.*

Tulare irrigation district, a public corporation organized and existing under and in pursuance of the laws of the State of California, for value received, promise- to pay to the bearer hereof, at the office of the treasurer of said district, the sum of five hundred dollars, in gold coin of the United States, in installments as follows, to wit: At the expiration — eleven years, five per cent. of said sum; at the expiration of twelve years, six per cent. of said sum; at the expiration of thirteen years, seven per cent. of said sum; at the expiration of fourteen years, eight per cent. of said sum; at the expiration of fifteen years, nine per cent. of said sum; at the expiration of sixteen years, ten per cent. of said sum; at the expiration of seventeen years, eleven per cent. of said sum; at the expiration of eighteen years, thirteen per cent. of said sum; at the expiration of nineteen years, fifteen per cent. of said sum; at the expiration of the twentieth year, sixteen per cent. of said sum; said installments to be paid as provided in and only upon presentation and surrender of the installment coupons hereunto attached. Said — further promises to pay interest on said sum at the rate of six per cent. per annum, payable semi-annually, on the first day of January and July of each year, in gold coin of the United States, on presentation and surrender at the office of the treasurer of said district of the respective interest coupons hereunto attached.

381 This bond is a series of bonds, amounting in the aggregate to five hundred thousand dollars, caused to be issued by the board of directors of said Tulare irrigation district by authority of

and pursuant to the provisions of an act of the legislature of the State of California, entitled "An act to provide for the organization and government of irrigation districts, and to provide for the acquisition of water and other property, and for the distribution of water thereby for irrigation purposes," approved March 7, 1887; and also by authority of and in accordance with the vote of the qualified electors of said irrigation district at a special election duly held on the 7th day of June, 1890.

The principal and interest of said bonds are to be paid out of the proceeds of annual assessments to be levied upon the lands of the district, amounting to — acres of the present assessed value of $—.

In witness whereof, this bond has been signed by the president and secretary of the board of directors of said Tulare irrigation district, and the seal of said board has been affixed hereto, this — day of ——, in the year one thousand eight hundred and ninety.

——— ———
President of said Board.

[SEAL.]

——— ———
Secretary of said Board.

$—. Installment coupon No. —.

Tulare irrigation district will pay to bearer, at the office of the treasurer of said district, at Tulare, Tulare county, State of
382 California, U. S. A., on —— 1, 190– the sum of — dollars, in gold coin of the United States, being — installment of — per cent. of the principal of bond No. — dated —— —, 1890.

Interest on said installment will cease after maturity.

—— ——, *Secretary.*

$—. Interest coupon No. —.

Tulare irrigation district will pay to bearer, at the office of the treasurer of said district, at Tulare, Tulare county, State of California, U. S. A., on —— 1, 18—, the sum of — dollars, in gold coin of the United States, being semi-annual interest on bond No. — dated —— —, 1890. —— ——, *Secretary.*

That immediately thereafter, to wit: on the 1st day of July, 1890, said board of directors ordered that one thousand bonds of said district (with the coupons thereto attached), conforming to the provisions of said act, and to the foregoing order, be prepared, executed and issued in such manner and form in all respects, that they should become and be ready for sale by said board of directors for and in behalf of said district.

That thereafter, to wit: on the 6th day of August, 1890, said board of directors, at a regular meeting thereof, by a resolution duly adopted by, and entered in the minutes of said board, declared its intention to sell said bonds to the amount of two hundred
383 thousand dollars, on the 17th day of November, 1890, and ordered that a notice that sealed proposals would be received

by said board at its office in the city of Tulare, up to the hour of one p. m. of the 17th day of November, 1890, for the purchase of said bonds last aforesaid, be published for twenty days before said day, in the following-named daily newspapers: The San Francisco Journal of Commerce, published in the city and county of San Francisco, the Sacramento Bee, published in the city of Sacramento, and the Los Angeles Express, published in the city of Los Angeles.

That none of said bonds have been sold, but all of the same remain unsold.

Wherefore, your petitioner prays that the proceedings aforesaid, for the issue and sale of said bonds of said irrigation district may be judicially examined, approved and confirmed by this court.

J. W. DAVIS,
Attorney for Petitioner.

A. L. RHODES, *Of Counsel.*

(Endorsed:) No. 2329. Superior court, Tulare county. In the matter of Tulare irrigation district.—Petition for confirmation—Filed Aug. 11, 1890. John G. Knox, clerk, by —— ——, deputy. J. W. Davis, attorney for petitioner.

384 In the Superior Court of the County of Tulare, State of California.

In the Matter of Tulare Irrigation District. No. —.

Upon reading and filing the petition of the board of directors of Tulare irrigation district, praying that the proceedings for the issue and sale of the bonds of said district may be judicially examined, approved and confirmed by this court, it is ordered by the court, that said petition be set down for hearing by the court, on the 15th day of September, 1890, at the opening of the court on that day, at the court-house in the city of Visalia, in the county aforesaid; and that the clerk of this court cause a notice of the filing of said petition to be given and published in the manner and for the time prescribed by law; that he post said notice in three public places in each election precinct in said irrigation district, for at least twenty days before said day, and that he cause said notice to be published in the Weekly Tulare Register, a newspaper in the city of Tulare, in said county, once a week for three successive weeks before said day; that said notice shall state the time and place as aforesaid for the hearing of said petition, and shall state the prayer of said petition, and that any person interested in the organization of said irrigation district or in the proceedings for the issue and sale of said bonds, may, on or before the day aforesaid, demur to or answer said petition.

Aug. 11, 1890.

WM. W. CROSS, *Judge.*

385 (Endorsed:) No. 2329. Superior court, Tulare county. In the matter of Tulare irrigation district. Order setting petition for hearing and directing — to be given—Filed Aug. 11,

1890. John Cutler, Jr., clerk by —— ——, deputy. Recorded Aug. 13, 1890.

Affidavit of Publication.

STATE OF CALIFORNIA, } ss:
County of Tulare, }

Miles Ellsworth being duly sworn, upon his oath deposes and says: My name is Miles Ellsworth. I am a resident of the county of Tulare, State of California, and am over the age of twenty-one years. I am now, and ever since the first day of August, 1890, have been one of the editors, printers and publishers of the Weekly Tulare Register, a newspaper printed and published in Tulare, in said Tulare county, and as such had charge of all the advertisements published in said newspaper since said first day of August, 1890, and I further state that the notice of hearing petition, of which the the copy annexed on the margin hereof is a true printed copy, which printed copy is hereby referred to and made part hereof, was published in said newspaper once each week for five successive weeks, the said notice being in each number of the regular and entire issue, and not in any supplement thereof, and during each and all the times specified as follows, to wit: In the issue of August 15th, 1890; in the issue of August 22, 1890; in the issue of August 29, 1890; in the issue of September 5, 1890; in the issue of September 12, 1890.

MILES ELLSWORTH.

386 Subscribed and sworn to before me this 13th day of September, 1890.

J. W. DAVIS,
Notary Public, Tulare Co., Cal.

[SEAL.]

(For printed notice referred — in above affidavit see next page.) (Clerk.)

Notice of Hearing of Petition.

In the Superior Court of the County of Tulare, State of California.

In the Matter of Tulare Irrigation District.

Notice is hereby given that the petition of the Board of Directors of Tulare Irrigation District, praying that the proceeding for the issue and sale of the bonds of said district, may be judicially examined, approved and confirmed by said court, was on the 11th day of August, 1890, filed in said court; that said court fixed as the time for the hearing of said petition, the 15th day of September, 1890, at the opening of the court on that day, at the court-house in the city of Visalia, county of Tulare; and notice is further given that any person interested in the organization of said district, or in the pro-

ceedings for the issue or sale of said bonds, may on or before the day last above mentioned, demur to or answer said petition.

By order of the court,

Attest:

[SEAL.] JOHN G. KNOX, *Clerk.*

(The foregoing is the copy of the printed notice referred — in the affidavit.) (Clerk.)

(Endorsed:) No. 2329. Superior court, county of Tulare. In the matter of Tulare Irrigation District. Proof of publi-
387 cation of notice of hearing petition for confirmation. Filed Sept. 15, 1890. John G. Knox, clerk. J. W. Davis, att'y for petitioner.

Notice of Hearing of Petition.

In the Superior Court of the County of Tulare, State of California.

In the Matter of Tulare Irrigation District.

Notice is hereby given that the petition of the Board of Directors of Tulare Irrigation District, praying that the proceeding for the issue and sale of the bonds of said district may be judicially examined, approved and confirmed by said court, was, on the 11th day of August, 1890, filed in said court; that said court fixed as the time for the hearing of said petition, the 15th day of September, 1890, at the opening of the court on that day, at the court-house in the city of Visalia, county of Tulare and notice is further given that any person interested in the organization of said district or in the proceedings for the issue or sale of said bonds, may, on or before the day last above mentioned, demur to or answer said petition.

By order of the court.

Attest:

[SEAL.] JOHN G. KNOX, *Clerk.*

(The foregoing is a copy of the notice referred — in the following annexed affidavit.) (Clerk.)

STATE OF CALIFORNIA, } ss:
County of Tulare, }

388 Edward Oakford, being duly sworn, says:

I am, and at all the times hereinafter mentioned was, secretary of the board of directors of Tulare irrigation district; on the 19th day of August, 1890, I posted notices of hearing of petition of which the annexed is a true copy, in three public places in each election precinct in said district, to wit:

In precinct No. 1.—On fence along public road on southwest quarter of section 36, township 19 south, range 24 east of Mount Diablo meridian; on fence along public road on southwest quarter of section 6, township 20 south, range 25 east of Mount Diablo meridian; and on fence along public road at northeast corner of

the northeast quarter of section 13, township 20 south, range 24 east of Mount Diablo meridian.

In precinct No. 2.—On gate post at east side of public road on west side of southwest quarter of section 22 township 19 south, range 24 east of Mount Diablo meridian; on fence along public road, at northeast corner of northwest quarter of said section 32, said township and range, and on stake near the intersection of public roads on the southeast corner of lot number 20, in Russell colony.

In precinct No. 3.—On an oak tree at south side of public road on northeast quarter of section 11, township 20 south, range 23 east of Mount Diablo meridian; on fence at south side of public road; on section 24, said township and range, and on fence along public road at southeast corner of the southeast quarter of section 16, township 20 south, range 24 east of Mount Diablo meridian.

Precinct No. 4.—On bulletin-board at the post-office; on awning post in front of Grand hotel, on Front street; and on bulletin-board in front of city clerk's office, on Kern street all in the city of Tulare.

389 In precinct No. 5.—On fence along public road on north side of northwest quarter of section 30, township 20 south, range 24 east of Mount Diablo meridian; on fence along public road on east side of east half of section 32, said township and range; and on fence post on east side of public road on section 27, said township and range.

In addition to the above, I posted one of said notices in the office of the board of trustees of said district, in the city of Tulare.

EDWARD OAKFORD.

Subscribed and sworn to before me this 8th day of September, 1890.

[SEAL.] J. W. DAVIS,
Notary Public, Tulare County, Cal.

(For printed notice referred to in above affidavit see next page.) (Clerk.)

(Endorsed:) No. 2329. Superior court, county of Tulare. In the matter of Tulare Irrigation District. Proof of posting notice of hearing petition for confirmation. Filed Sept. 15, 1890. John G. Knox, clerk.

390 In the Superior Court of the County of Tulare, State of California.

In the Matter of Tulare Irrigation District.

This cause having been regularly brought on to hearing before said court on the 15th day of September, 1890, the said board of directors appearing by J. W. Davis, its attorney, and A. L. Rhodes, as counsel, no person having demurred to or answered said petition, herein filed, or appeared in opposition thereto.

And the evidence being heard and the cause being submitted to

the court for its decision, the court now finds the following facts and conclusions of law, in the cause

1st. That on the 11th day of August, 1890, the said court ordered the petition herein to be set down for hearing on the 15th day of September, 1890, at the opening of court on that day, at the court-room of said court, at the city of Visalia, in said county, and that the clerk of this court cause a notice of the filing of said petition to be given and published in the manner prescribed by law, to wit: by the publication of said notice, once a week for three successive weeks before the said 15th day of September, 1890, in the Weekly Tulare Register a newspaper published in the city of Tulare in said county, and also by posting such notices for at least twenty days before the said 15th day of September, 1890, in three public places in each of the election precincts of said district, and that said notice should state the time and place as aforesaid, for the hearing of said petition and the prayer of said petition, and that any person interested in the organization of said district or
391 in the proceedings for the issue or sale of said bonds, may, on or before the day aforesaid, demur to or answer said petition.

2nd. That said notice was duly given and published in conformity with law, and with said order of said court.

3rd. That on or about the 2nd day of September, 1889, the said irrigation district was duly organized by, and under the directions of the board of supervisors of said county, and that the first board of directors of said irrigation district was duly elected on or about the 24th day of August, 1889. That an order of said board of supervisors directing a certified copy of said order for the organization of said district to be filed for record in the office of the recorder of said county was duly made by said board of supervisors on the said 2nd day of September, 1889, but said order was not entered on the minutes of said board for said day, but was, by an order of said board made on the 8th day of July, 1890, ordered to be entered *nunc pro tunc* and was so entered, that all the proceedings of said board of supervisors, under and by virtue of which said irrigation district was organized, and the said first board of directors of said district were elected, were, and are, legal and regular.

4th. That said board of directors, within the time prescribed by law, duly qualified, and thereupon entered upon the discharge of their duties. That thereafter, at the time and in the manner prescribed by law, the present board of directors was duly elected, and thereupon duly qualified, and entered upon the discharge of their duties.

5th. That all the lands in said district are situated within said county of Tulare, and the said office of said board of directors is required to be kept, and in fact, is kept, at the city of Tulare, in said county.

6th. That the board of directors of said district, as soon as practicable after the organization of said district to wit: on or about the 18th day of May, 1890, at a regular meeting thereof,
392 estimated and determined the amount of money necessary to be raised by said district, for the purpose of constructing

the canals and works which were necessary for the irrigation of the lands of said district, and for the purpose of acquiring for said district the property, water and water rights that would be necessary therefor; that the said board of directors then and there estimated that the sum of five hundred thousand dollars ($500,000.00) was necessary to be raised for the purposes aforesaid; and determined that it was necessary and proper that the bonds of said district, to the amount of five hundred thousand dollars ($500,000.00) be issued by said district and that the same be sold in order to raise the amount of money necessary for said purposes, provided the qualified electors of said district should vote in favor of the issue of said bonds.

7th. That thereupon, the said board immediately called a special election to be held in said district for the purpose, at the time and in the manner mentioned in the petition herein and then ordered that notice of such election be given for the time and in the manner mentioned in said petition.

8th. That said special election was held in said district at the time and in the manner prescribed in said order and notice; upon the question whether the bonds of said district should be issued in the amount aforesaid; that said election was held and conducted in all respects in conformity with the provisions of said act; that the returns of said election were duly made as mentioned in said petition; that said board of directors canvassed the returns of said election in the manner mentioned in said petition, and therefrom ascertained and declared that a majority of all the legal votes cast at said election were in favor of such issue of the bonds of said district.

9th. That thereafter, the said board of directors at a regular meeting thereof, ordered that the bonds of said district in
393 the amount of five hundred thousand dollars ($500,000) be issued in the manner and form prescribed by law; that all of said bonds be of the denomination of five hundred dollars (500) each; that there should be attached to each of said bonds, coupons for installments of the principal of said bond, and for the semi-annual interest thereon; that said bonds should be substantially in the form and signed, sealed and numbered as provided in said act; that they should bear interest at the rate of six (6) per cent. per annum, payable semi-annually; that the coupons for the installments of the principal should be signed by the secretary of said board, and that the principal and interest of said bonds should be payable in gold coin of the United States, at the office of the treasurer of said district; that the said bonds should contain the recitals mentioned in said act, and also the recital of the result of the election aforesaid; that said bonds be payable to bearer thereof, and be dated as of the same date, and that said bonds and coupons should state the dates of their respective maturities and should be substantially in the forms respectively mentioned in said petition.

10th. That immediately thereafter, to wit: on the first day of July, 1890, said board of directors ordered that one thousand (1,000) bonds of said district, with the coupons thereto attached, conform

ing to the provisions of said act, and the orders above mentioned, be prepared, executed and issued in such manner and form in all respects; that they should become and be ready for sale by said board of directors for and in behalf of said district.

11th. That thereafter, to wit: on the 6th day of August, 1890, said board of directors, at a regular meeting thereof, by a resolution duly adopted by and entered in the minutes of said board, declared its intention to sell the said bonds to the amount of two hundred thousand dollars ($200,000) on the 17th
394 day of November, 1890, and ordered that a notice that sealed proposals be received by said board at the time and place mentioned in said petition; that none of said bonds have yet been sold, but all of the same remain unsold.

Conclusions of Law.

From the foregoing facts, the court finds the following conclusions of law:

1st. That the said Tulare irrigation district was duly and regularly organized as an irrigation district, and from the time of its organization to the present time has been and now is a legal and valid irrigation district, and that all the proceedings for its organization are entitled to approval and confirmation by this court.

2nd. That the proceedings of the board of directors of said district in providing for and authorizing the issue and sale of the bonds of said district, to the amount of five hundred thousand dollars ($500,000) including the election held in said district, at which election the question whether the bonds of said district, in the said amount should be issued, was submitted to the qualified electors of said district, are legal and valid, and entitled to approval and confirmation by the court.

3rd. That the proceedings, orders and resolutions of said board for the issue of the bonds of said district to the amount of five hundred thousand dollars ($500,000), as above recited, and the order prescribing the form of such bonds, and the order for the sale of such bonds to the amount of two hundred thousand dollars ($200,000) as above recited, are legal and valid, and entitled to approval and confirmation by the court.

4th. That said board of directors is entitled to a judgment approving and confirming all the proceedings aforesaid mentioned in said petition.

395 Ordered that judgment be entered accordingly.

WM. W. CROSS, *Judge.*

(Endorsed:) No. 2329. Superior court, county of Tulare. State of California. In the matter of Tulare irrigation district. Findings. Filed Sept. 15, 1890. John G. Knox, clerk.

In the Superior Court of the County of Tulare, State of California.

In the Matter of Tulare Irrigation District.

This cause came on regularly for hearing before said court, on the 15th day of September, 1890, the said board of directors appearing by J. W. Davis, as its attorney, and A. L. Thodes as counsel, no person having demurred to or answered said petition herein filed, or appeared in opposition thereto. And it appearing that said court, on the 11th day of August, 1890, ordered that the petition herein be set down for hearing on the 15th day of September, 1890, at the opening of court on that day at the court-room of said court at the city of Visalia, in said county, and that the clerk of said court caused a notice, in the form prescribed by law, of the filing of said petition to be given and published in the manner prescribed by law;
396 and it further appearing that said notice has been duly given and published for the time and in the manner prescribed by law and pursuant to said order, to wit: by the publication of said notice once a week for three successive weeks before said 15th day of September, 1890, in the Weekly Tulare Register, a newspaper published in the city of Tulare in said county, the office of said board of directors being required to be kept, and having ever since the organization of said district been kept in said county, and also by posting of such notices for at least twenty days before the said 15th day of September, 1890, in three public places in each of the election precincts of said district. And this cause having been tried on said 15th day of September, 1890, by the court without a jury, and the testimony, both oral and documentary, having been heard, and the cause having been submitted to the court for decision, and the court having made and filed its findings of fact and conclusions of law, and its order of confirmation, and ordered that judgment be entered in accordance therewith in favor of said petitioners;

Wherefore, by reason of the law and the findings and order aforesaid, it is ordered, adjudged and decreed that the said Tulare irrigation district was duly organized by and under the directions of the board of supervisors of said county, on or about the 2nd day of September, 1889; that the first board of directors of said irrigation district was duly elected; and that all the proceedings of said board of supervisors, under and by virtue of which said irrigation district was organized and the first board of directors of said district was elected, be, and the same are hereby approved and confirmed.

And it is further ordered, adjudged and decreed that all the proceedings had by or under the authority and direction of said board of directors, for the purpose of the issue of the bonds of said
397 district, to the amount — five hundred thousand dollars ($500,000.00) including in said proceedings the estimate made by said board of directors mentioned in said petition, of the amount of money necessary to be raised for the purpose of constructing the necessary canals and works, and acquiring the necessary property therefor, and otherwise carrying out the provisions of the said act under which said district was organized; and including in said

proceedings the election mentioned in said petition, which was called and held upon the question whether the bonds of said district in the amount aforesaid, should be issued; and also including in said proceedings the order of said board of directors that the bonds of said district, in said amount be issued by said board, in the manner and form prescribed by said act; and also including the form of said bonds, and the coupons thereto attached, be, and the same are hereby approved and confirmed.

And it is further ordered, adjudged and decreed that the said Tulare irrigation district, ever since its organization as aforesaid has been, and now is a duly and legally organized irrigation district, and that it possesses full power and authority to issue and sell, from time to time, the bonds of said district, to the amount of five hundred thousand dollars, ($500,000.00) and it is ordered that said petitioner- pay the costs of this proceeding.

WM. W. CROSS, *Judge.*

(Endorsed:) No. 2329. Superior court, county of Tulare, State of California. In the matter of Tulare irrigation district. Judgment. Decree entered, Sept. 15, 1900. Decrees vol. 1, page 568. Filed Sept. 15, 1890. John G. Knox, clerk.

398 In the Superior Court of the County of Tulare, State of California.

In the Matter of Tulare Irrigation District.

Now comes as defendants B. W. Jauchius, J. L. Gould, George C. Kelly and Ralph Jones, and for answer to the petition of the board of directors of Tulare irrigation district filed in the above-entitled matter, deny and allege as follows:

Deny that said irrigation district was on or about the 2nd day of September, 1890, or at any other time, duly or otherwise organized as an irrigation district, by the board of supervisors of Tulare county, under or in pursuance of an act entitled "An act to provide for the organization and government of irrigation districts, and to provide for the acquisition of water and other property and for the distribution of water thereby for irrigation purposes," approved March 7th, 1887, or any other act, or at all.

Deny that ever since its said organization or since any other time, it has claimed in good faith or otherwise to be or has existed as an irrigation district.

Allege that the petition presented to the board of supervisors of said Tulare county for the formation of said irrigation district, was not signed by fifty or by a majority of the freeholders owning land in said irrigation district.

Allege that no notice whatever was given by said petitioners or by any one else of the time of the meeting at which said petition would be presented to said board of supervisors and that these taxpayers had no notice thereof and did not know when the same would be presented to said board.

Allege that said board of supervisors in disregard of said petition and the rights of said petitioners and in violation of the
399 express provisions of said act authorizing the formation of said district, modified and changed the proposed boundaries of said district as set forth in said petition, so as to except and exclude from said district fully thirty thousand acres of land, all of which lands so excluded was susceptible of irrigation from the same system of works applicable to the other lands in said proposed district and would be similarly benefited thereby;

Allege that upon the hearing of said petition said board of supervisors established and defined the boundaries of said proposed district, but said boundaries so established and defined comprised and embraced four separate and distinct bodies of land not contiguous to each other, which taken together did not, and do not form one tract of land and is not such a body of land as is contemplated or intended by said act to be organized as an irrigation district, nor is it such a body of land as was petitioned to be organized into an irrigation district.

Allege that said board of supervisors did not cause a copy of its order declaring the territory petitioned for duly organized as an irrigation district, duly certified or otherwise or at all, to be filed for record in the office of the county recorder of said Tulare county.

Deny that the board of directors of said district as soon as practicable after the organization of said district, or at any time or at all estimated or determined the amount of money necessary to be raised by said district for the purpose of constructing canals and works or canals or works which were necessary for the irrigation of the lands of said district, or for the purpose of acquiring for said district the property or water or water rights which would be necessary therefor; and deny that said board of directors, then and there, or at any time or place estimated that the sum of five hundred thousand dollars was necessary to be raised for the purpose aforesaid or for any purpose.

Allege that at no time since the organization of said district has the board of directors thereof estimated and determined the
400 amount of money necessary to be raised by said district for the purpose of constructing the canals and works which were necessary for the irrigation of the lands of said district and for the purpose of acquiring for said district the property, water and water rights which would be necessary therefor.

Allege that at no time since the organization of said district has its board of directors ever established or located or adopted any system of works for a mode of irrigation of the lands of said district, from a common source of supply, nor was any common source of supply for said district ever located or established for any irrigation system or systems of orrigation works by said board of directors, nor was any system of irrigation works ever established by said board of directors for said district and no line of canals with necessary branches and water therefor to irrigate the lands embraced within said district was ever devised, fixed or determined upon by said board or by any other person, and at no time has said board

determined upon, located or considered any plan embracing a supply of water to irrigate the lands of said district.

Allege that no plans or specifications of or for any system of irrigation or irrigation works or of canals or water supply were ever made whereby and upon which an estimate could be made by said board, and no estimate was ever made by them.

Allege that said board of directors did not at any time estimate that the sum of five hundred thousand dollars, or any other sum would be necessary to be raised for the purposes mentioned in said petition.

Deny that said board of directors ever determined that it was necessary and proper, or necessary or proper that bonds of said district to the amount of five hundred thousand dollars, or any other sum, conforming in all or in any respect to the provisions of said act, or at all, should be issued by said district or that the same should be sold in order to raise the amount of money necessary for said purposes.

401 Allege that said board of directors did not at any time determine that it was necessary or proper that the bonds of said district in the amount of five hundred thousand dollars or in any other amount, be issued by said district, and be sold to raise the money necessary for the purpose of constructing the canals and works for the irrigation of the lands of said district and for the acquisition of the property, water and water rights necessary therefor.

Allege that at all times since the alleged organization of said district, the defendant B. W. Jauchius has been and now is the owner and in possession of the real estate situate within the boundaries of said district and as part thereof, described as lots 24 and 25, in block 86, and lots 11 to 16 inclusive in block 70 of the city of Tulare; that defendant J. L. Gould has been since the alleged organization of said district and now is the owner and in possession of the real estate situate within the boundaries of said district and forming a part thereof, described as the west half of the northwest quarter of section 14, in township 20 south of range 23 east; that the defendant George G. Kelly has ever since the alleged organization of said district been and now is the owner and in possession of the real estate situate within the boundaries of said district and forming a part thereof, described as the south half of section 33 in township 19 south of range 24 east; and that defendant Ralph Jones has ever since the alleged organization of said district been the owner and in the possession of the real estate within the boundaries of said district and forming a part thereof described as the lots 1 to 16 inclusive in block 160 in said city of Tulare.

Wherefore, the above-named defendants pray that the approval and confirmation of the proceedings had by said board of directors as aforesaid and as alleged in said petition filed herein, be denied by this court, and that a decree may be had that said district is illegally organized and void.

That all the bonds issued as set forth in said petition be
402 declared void and not a lien on the lands of said district and

for such other and further relief in the premises as may seem meet and agreeable to equity and for costs of suit.

C. L. RUSSELL,
G. W. ZARTMAN,
Attorneys for Defendants.

STATE OF CALIFORNIA, }
County of Tulare. }

B. W. Jauchius being duly sworn, deposes and says:
I am one of the defendants in the above-entitled proceedings. I have read the foregoing answer and know the contents thereof. and the same is true of my own knowledge, except as to the matters therein stated on information and belief, and as to those matters, I believe it to be true.

B. W. JAUCHIUS.

Subscribed and sworn to before me this 16th day of April, 1898.
[SEAL.]
G. W. ZARTMAN,
Notary Public in and for the County of Tulare, State of California.

(Endorsed:) No. 2329. In the superior court of Tulare county State of California. In the matter of Tulare Irrigation District. Answer of defendants, B. W. Jauchius, *et al.* Filed April 18, 1898. W. H. Hammond, clerk. Guy Gilmer, deputy.

403 In the Superior Court, County of Tulare, State of California.

In the Matter of Tulare Irrigation District.

This is a proceeding brought about eight years ago to confirm by judicial decree, the organization of the above-named district.

Heretofore a decree of confirmation of such organization has been made and entered herein, and subsequent to such decree being entered, on complaint of Jauchius and others, such decree was vacated and set aside. That matter was presented to the court on demurrer to the complaint, which demurrer was submitted to the court without argument, and at once overruled, in accordance with a well-established rule of this court, to overrule all demurrers that are submitted without argument. No answer was made to the complaint, and the petitioner took the relief asked for by default, and the decree of confirmation was set aside by the order of the court.

This last order is not now before me for review. Indeed, it would seem that the only proper way to review it is by appeal to the Supreme Court.

The questions for the court to determine now are: "Was the district properly organized under the Wright act," and "Has the court jurisdiction to enter a decree of confirmation herein?"

The Wright act provides as a first step in the organization of an irrigation district that a petition signed by fifty freeholders, owning land in the proposed district, should be presented to the board of supervisors.

In this proceeding the burden of proof rested on the pe-
404 titioners to show that at least fifty of the signers of the petition to the board of supervisors were land-owners in the district. This fact should have been proved by competent evidence. The records of the board of supervisors was neither sufficient nor competent to prove such fact, and there seems to be no other evidence on the subject.

The district as platted consists of several distinct tracts of land not contiguous to each other. Tracts of land which corner upon each other are not contiguous.

Linn County Bank *v.* Hopkins, 28 Pacific Reporter, 606.

I think it was the intention of the legislature, as expressed in the Wright act and acts supplemental thereto, that an irrigation district should consist of one contiguous tract of land.

The evidence in the case shows that no estimates were made as to the expense of, and no plan or system of ditches were adopted for the irrigation of the district prior to the issuance of bonds.

Let the prayer of the petition be denied and the organization of the district be declared illegal.

The defendant will prepare findings in accordance with this opinion.

WHEATON A. GRAY,
Judge of Superior Court.

(Endorsed:) No. 2329. Superior court of the county of Tulare. In the matter of Tulare Irrigation District. Opinion of court. Filed Nov. 18th, 1898. Wm. H. Hammond, clerk. Guy Gilmer, deputy.

405 In the Superior Court of the State of California in and for the County of Tulare.

In the Matter of Tulare Irrigation District.

This cause having been regularly brought on for hearing before said court on the 17th day of June, 1898, upon the issues presented by the petition of the Board of Directors of Tulare Irrigation District, and the answer thereto, the said Board of Directors, petitioners herein, appearing by E. W. Holland, its attorney, and the defendants B. W. Jauchius, J. L. Gould, George G. Kelly and Ralph Jones, appearing by their attorneys C. L. Russell and G. W. Zartman, and the evidence having been heard by the court upon the issues herein aforesaid, and the cause having been submitted to the court for its decision, the court now finds the following facts and conclusions of law in the cause;

First. That said Tulare irrigation district was not on or about the 2nd day of September, 1889, or on any other day or at all, duly or otherwise organized as an irrigation district, by the board of supervisors of Tulare county, and never was organized as an irrigation district under the act of the legislature of the State of California mentioned in the petition of petitioners or any other act, and has

not since the times stated in said petition claimed in good faith or otherwise, to be, and has not existed as an irrigation district.

Second. That the first board of directors of said district never were duly elected under and in pursuance of the act mentioned in said petition; and that J. W. Mackie, A. P. Merritt, W. B. Cartmill, E. De Witt and J. F. Gibson were not on the second day of April, 1890, duly elected as members of the board of directors of
406 said district, and they have not since their qualification as such directors constituted, and did not at the time of the filing of said petition, constitute the board of directors of said irrigation district.

Third. That all the land- of said district embraced within its boundaries are situate in the county of Tulare.

Fourth. That the petition presented to the board of supervisors of said Tulare county, for the formation of said district, was not signed by fifty or a majority of the freeholders owning land in said irrigation district.

Fifth. That no notice whatever was given by petitioners or by any one else, of the time of the meeting of the board of supervisors, at which the petition for the formation of said district would be presented; and these defendants had no notice thereof and did not know that the same would be presented to the board of supervisors.

Sixth. That the board of supervisors to whom the petition for the formation of said Tulare irrigation district was presented, in disregard to said petition and its provisions and the rights of the petitioners therein named and thereto subscribed, and in violation of the express provisions of the act of the legislature authorizing the formation of said district, modified and changed the proposed boundaries of said district as set forth in said petition so as to except and exclude from said district fully 30,000 acres of land, all of which land so excluded was susceptible of irrigation from the same system of works applicable to the other lands in said proposed district, and which would be similarly benefited thereby.

Seventh. That upon the hearing of said petition said board of supervisors established and defined the boundaries of said proposed district, but said boundaries so established and defined comprise and embrace four separate and distinct bodies of land not contiguous to each other, which taken together did not and do not form one tract of land, and is not such a body of land as is con-
407 templated or is intended by said act to be organized as an irrigation district, nor is it such a body of land as was petitioned to be organized into an irrigation district.

Eight. That said board of supervisors did not cause a copy of its order declaring the territory petitioned for duly organized as an irrigation district, duly certified as such, to be filed for record in the office of the county recorder of said Tulare county.

Nine. That the board of directors of said district did not as soon as practicable after the organization of said district nor at any time, nor at all, estimate or determine the amount of money necessary to be raised by said district for the purpose of constructing canals and works, or canals or works necessary for the irrigation of the lands

of said district, or for the purpose of acquiring for said district the property or water, or water rights which would be necessary therefor.

That the board of directors of said district have not at any time or place estimated that the sum of $500,000 was necessary to be raised for the purpose of constructing canals and works, or canals or works necessary for the irrigation of the lands of said district, or for the purpose of acquiring for said district property or water, or water rights necessary therefor, or for any other purpose. And at no time since the organization of said district has the board of directors thereof estimated and determined the amount of money necessary to be raised by said district for the purpose of constructing the canals and works necessary for the irrigation of the lands of said district, and for the purpose of acquiring for said district the property, water and water rights which would be necessary therefor.

Ten. That at no time since the organization of said district has its board of directors ever established or located or adopted any system of irrigation for a mode of irrigation of the lands of
408 said district from a common source of supply, and no common source of supply for said district was ever located or established for any irrigation system or system of irrigation works, by the board of directors of said district, nor was any system of irrigation works ever established by the board of directors of said district, and no line of canals with necessary branches and water therefor to irrigate the lands embraced within said district, was ever devised, fixed or determined upon by the coard of directors of said district, or by any other person; and at no time has the board of directors of said district determined upon, located or considered any plan embracing a supply of water to irrigate the lands of said district.

Eleven. That no plans or specifications of or for any system of irrigation or irrigation works, or of canals or water supply were ever made whereby and upon which an estimate could be made by the board of directors of said district, and no estimate was ever made by said board of directors.

Twelve. That the board of directors of said district did not at any time determine that it was necessary or proper that the bonds of said district in the amount of $500,000 or in any other amount be issued by said district, and be sold to raise the money necessary for the purpose of constructing canals and works for the irrigation of the lands of said district, and for the acquisition of the property, water, and water rights necessary therefor.

Thirteen. That at all times since the alleged organization of said district, the defendants herein have been, and now are, severally the owners and in possession of the real estate situate within the boundaries of said district, particularly described in the answer to said petition.

As conclusion of law from the foregoing facts, the court finds:

I. That the said Tulare irrigation district was not duly or
409 regularly organized as an irrigation district, and from the time of its attempted organization to the present time has not

been and is not now, a legal or valid irrigation district; and none of the proceedings for its attempted organization are entitled to approval or confirmation by this court, but the approval and confirmation of all such proceedings are hereby denied, and all such proceedings for the organization of said district are illegal and void.

2. That the proceedings of the board of directors of said district in providing for and authorizing the issue and sale of the bonds of said district to the amount of $500,000 are illegal and void, and are not entitled to the approval and confirmation of the court.

3. That the proceedings, orders and resolution of said board of directors for the issue of the bonds of said district, to the amount of $500,000, and the order prescribing the form of such bonds, and the order of the sale of such bonds to the amount of $200,000 are illegal and void, and not entitled to the approval and confirmation by the court.

4. That the petitioners herein are not entitled to a judgment approving and confirming the proceedings mentioned in their petition; but the defendants herein are entitled to a judgment denying the approval and confirmation of such proceedings, and adjudging and decreeing that the proceedings had for the formation of said irrigation district and all its proceedings had since such formation and organization, including the issue and sale of its bonds are illegal and void.

That judgment be entered accordingly.

WHEATON A. GRAY,
Judge of the Superior Court.

Dated November 23rd, 1898.

410 (Endorsed:) No. 2329. In the superior court of Tulare county, State of California. In the matter of Tulare Irrigation District. Findings. Filed Nov. 23rd, 1898. Wm. H. Hammond, clerk, George L. Bliss, deputy.

In the Superior Court of the State of California in and for the County of Tulare.

In the Matter of Tulare Irrigation District.

This cause came on regularly for hearing by stipulation of the parties hereto and the order of the court before said court on the 17th day of June, 1898, said Board of Directors, petitioner herein, appearing by E. W. Holland, as its attorney, and the defendants B. W. Jauchius, J. L. Gould, George G. Kelly and Ralph Jones appearing herein by their attorneys C. L. Russell and G. E. Zartman; and the cause having been tried on said 17th day of June, 1898, by the court without a jury, and the testimony both oral and documentary, having been heard and the case having been submitted to the court for decision, and the court having made and filed its findings of fact and conclusions of law, and its order for judgment entered, in accordance therewith in favor of said defendants.

Wherefore by reason of the law and the findings and the order aforesaid, it is ordered and adjudged and decreed:

That the said Tulare irrigation district never was and is not now, duly or legally organized by the directions of the board of supervisors of Tulare county, on or about the 2nd day of September, 1889, nor at any other time, and the same is not now a duly or legally organized irrigation district.

That the first board of directors of said irrigation district were not duly or legally elected.

411 That all the proceedings of said board of supervisors under and by virtue of which said irrigation district was organized, and first board of directors of said district was elected are null and void, and approval of the same is hereby denied.

And it is further ordered, adjudged and decreed:

That all the proceedings had by or under the authority and direction of the board of directors of said Tulare Irrigation District, for the purpose of the issuance and sale of the bonds of said district to the amount of $500,000, are null and void, and approval of the same is hereby denied.

And it is further ordered, adjudged and decreed that the said Tulare Irrigation District ever since its attempted organization on or about the 2nd day of September, 1889, as aforesaid, has never been and is not now a legally organized irrigation district; that it has never possessed and does not now possess any power or authority to issue or sell bonds of said district, create indebtedness, or perform any of the functions, franchises or other acts of an irrigation district.

And it is further ordered that petitioners pay the costs herein.

WHEATON A. GRAY,
Judge of the Superior Court.

Dated this November 23rd, 1898.

Entered November 23rd, 1898, in Judgment Book 6, page 57, *et seq.*

WM. H. HAMMOND, *Clerk.*
GEO. L. BLISS, *Deputy.*

(Endorsed:) No. 2329. In the superior court of Tulare county, State of California. In the matter of Tulare Irrigation District. Decree Book 6, p. 57. Filed Nov. 23rd, 1898. Wm. H. Hammond, clerk. Geo. L. Bliss, deputy.

I hereby certify the foregoing to be a full, true and correct
412 copy of the original judgment-roll on file in my office in the above-entitled matter.

In witness whereof, I have hereunto set my hand and affixed the seal of the above-named court, this 14 day of Oct. 1899.

[Seal of the Superior Court of Tulare County.]

JOHN CUTLER, JR., *Clerk,*
By —— ——, *Deputy.*

(Cancelled stamp 10 cents.)

And to said offer of said judgment roll, the plaintiff objected and objected to each and all the papers purporting to be made or filed in the confirmation proceedings, which were or purported to have been made, subsequent in date to the date of the judgment in said proceedings offered by plaintiff, not only on the ground that such subsequent papers and each of them, are irrelevant, incompetent and immaterial, but because there was no proof or offer to prove any action, proceedings or judgment, setting aside or vacating or annulling the judgment in such confirmation proceedings, so offered in evidence by said plaintiff; and also, because it appears that even after the certified copy of the judgment-roll introduced in evidence by the plaintiff, six or seven years after bonds were sold in the year 1898, eight years after the original decree had been filed, and after the bonds were sold, as far as appears here, some tax-payers, alleged tax-payers, filed an answer in that same suit and obtained judgment in that proceeding then in the absence of any one except themselves on the one side, and the then directors on the other. And plaintiff objected that you cannot in that way make and unmake judgments. Which objections of the plaintiff the court sus-
413 tained, and excluded said judgment-roll, and to such ruling the defendant and intervenors each and severally, and respectively, then and there duly excepted. (Exception No. 12.)

That thereupon, the defendant and intervenors offered in evidence the following facts, which appear from the bond register of the defendant district, which was admitted by counsel for the plaintiff to be such bond register, to wit: That bonds numbered 301 to 313 inclusive, were sold June 14th, 1892; that bonds numbered 314 and 315 were sold June 7th, 1892; that bonds numbered 342 down to and including bond numbered 356 were sold June 3rd, 1891; that bonds numbered 389 to 396 inclusive were sold June 18th, 1891; that bonds numbered 398 down to and including bond number 418 were sold March 15th, 1892; that bonds numbered 427 to 430 inclusive, were sold April 8th, 1892; that bonds numbered 432 down to and including 452 were sold April 8th, 1892; that bonds numbered 455 to 464 inclusive, were sold April 8th, 1892; that bond numbered 478 was sold April 8th, 1892; that bond numbered 479 was sold April 8th, 1892; that the following bonds were sold April 8th, 1892, to wit: numbers 490 to 492 inclusive, number 548, number 562, numbers 578 to 579 inclusive; bond numbered 583; bonds numbered 588 to 603 inclusive; bonds numbered 607 and 608; bond numbered 616; bonds numbered 625 to 628 inclusive; bonds numbered 634 to 690 inclusive; bonds numbered 180 to 183 inclusive; bonds numbered 719 to 725 inclusive; bond numbered 728; bonds numbered 734 to 735 inclusive; bonds numbered 746 to 749 inclusive; that bonds numbered 759 down to and including 784 were sold April 9th, 1892; that bonds numbered 785 down to and including 813, were sold April 23rd, 1892; that bonds numbered 814 to 840, both inclusive, were sold May 3rd, 1892; that bonds numbered 841 down to and including 916, were sold on May 14th, 1892; that bonds numbered 934 down to and including 943 were sold June 13th,

1892; that bonds numbered 948 to 952 inclusive, were sold
414 June 13th, 1892; that bond numbered 955 was sold June 13th, 1892; that bonds numbered 961 and 962 were sold July 18th, 1892; that bonds numbered 978 down to and including 991 were sold July 18th, 1892, and that bonds numbered 992 to 1,000, inclusive, were sold January 30th, 1893.

That to the introduction of said evidence and said offer to introduce the same, and to each of the entries in the bond register of the defendant, as offered in evidence by the defendant and intervenors, the plaintiff objected, not only on the ground that the same is immaterial, irrelevant and incompetent, but because the whole of each of said entries was not offered and part of an entry is not admissible, disconnected from the rest of such entry. And thereupon, the court sustained said objection and excluded said evidence, and to said ruling of the court, the defendant and intervenors each and severally and respectively, then and there duly excepted. (Exception No. 13.)

And thereupon, it was admitted by counsel for the plaintiff, that the minute book hereafter referred to and read from, was the minute book of the board of directors of the defendant district.

Thereupon the defendant and intervenors offered from said minute minute book, the following entries, to wit: An entry appearing at page 27, as a part of the proceedings held by said board of directors, on the — day of —— 189–, in the words and figures following, to wit:

"It was moved by Director Gibson and seconded by Director Cartmill, that it is the sense of the board of directors of Tulare irrigation district, that an election be called in the district, to submit the proposition of bonds being issued to the amount of five hundred thousand dollars, for the purpose of constructing necessary canals, ditches, etc., and for purchasing water rights and for the distribution of water throughout the district.

415 The motion was carried by the following vote: Ayes' Directors Gibson, Merritt, and Cartmill; noes, Director De Witt."

Also, the following entry at pages 67 of said minute book, constituting a part of the proceedings of said board of directors had at a meeting held on the — day of —— 189–, in the words and figures following, to wit:

"Therefore, resolved, That it is the intention of this board, to sell the bonds of Tulare irrigation district to the said amount of two hundred thousand dollars on the 29th day of December, 1890, at the hour of one o'clock p. m., at the office of this board, in the city of Tulare; it is hereby ordered that this resolution be entered in the minutes of the board, and that notice of such sale and that sealed proposals for the purchase of said bonds will be received by said board at its office in said city of Tulare till the day and hour in the resolution above named, be published at least twenty days before said day, in the following daily newspapers: The Dail- Journal of Commerce, published in the city of San Francisco; the

Evening Bee, published in the city of Sacramento; and the Evening Express, published in the city of Los Angeles."

Also, the following entry appearing at pages 76 and 77, in said minute book, constituting a part of the proceedings of said board had at a meeting held on the — day of —— 189– in the words and figures following to wit:

"In the matter of proposals for the purchase of bonds: The hour of one o'clock p. m. having arrived, and that being the hour and this being the place fixed by this board by its resolution of December 2nd, 1890, for the sale of the bonds of this district, to the amount of two hundred thousand, and it appearing to the satisfaction of the board that due notice had been given in accordance with the law and the order of this board, by publication thereof for at
416 least twenty days, in the Daily Journal of Commerce, a daily newspaper published in the city of San Francisco, the Evening Bee, a daily newspaper published in the city of Sacramento, and the Evening Express, a daily newspaper published in the city of Los Angeles. It was ordered that the secretary be and he was instructed to open the proposals on file for the purchase of the bonds of the district; and whereas, among the sealed proposals so received, was that of J. Goldman & Co., for the purchase of said bonds to the amount of fifty thousand dollars, of the par or face value of said bonds, at the rate of ninety per cent. of the par or face value thereof; and the said board having examined and considered the same, and it appearing that said proposal of J. Goldman & Co., is the highest and best bid for said bonds, and that said J. Goldman & Co., are responsible bidders therefor;

Now, therefore, it is by the said board,

Resolved That the said bid of the said J. Goldman & Co., for the purchase of (fifty thousand dollars) of the par or face value of said bonds, at the rate of ninety per cent. of the par or face value of said bonds, be and the same is hereby accepted, and that the purchase of the same is hereby awarded to them. That said bonds numbered 201 to 300 both inclusive, be signed by the president and secretary. And that the secretary do affix the seal of said board thereto. That said bonds be delivered to the said J. Goldman & Co., or to their order, at their request upon their payment therefor, at the rate aforesaid.

That the coupon which shall have matured at the time of the delivering of said bonds, be, before the delivery of said bonds, detached and canceled by the secretary of this board, and that all additional accrued interest be adjusted at the time of the delivery of said bonds by removal and cancellation of a sufficient number of the then next maturing interest coupons, to represent the amount so accrued.

417 It was further ordered that the consideration and action upon the remaining sealed proposals for the purchase of bonds, be postponed to the next regular meeting of this board.

The secretary was ordered to telegraph Coffin and Stanton on the non-acceptance of their bid, and to write them stating the reasons why."

Also, the following entry at page 79 of said minute book, constituting a part of the proceedings of said board, at a meeting held on the — day of —— 189–, in the words and figures following, to wit:

"On motion, it was ordered that action on the bids for bonds of the district, be postponed until the adjourned regular meeting of this board."

Also, the following entry appearing at pages 85, 86 and 87, of said minute book, constituting a part of the proceedings of said board, at a meeting held on the — day of —— 189– in the words and figures following, to wit:

The following resolution was introduced by Director Cartmill, and after discussion was adopted by the unanimous vote of the board:

"Whereas, this board by virtue of a resolution, duly adopted by the board at *v* a regular meeting thereof, held on the 2nd day of September, 1890, declared its intention to sell the bonds of this district to the amount of two hundred thousand dollars of the par or face value of the bonds, and by said resolution declared and fixed the 29th day of December, 1890, at the hour of one o'clock p. m., of said day, and the office of said board, in the city of Tulare, as the time and place for the sale of said bonds, and whereas, on said 29th day of December, 1890, and prior to the hour aforesaid, the said board received the said proposals of W. A. Ray for the purchase of said bonds, to the amount of one hundred and fifty thousand
418 dollars, of the par or face value of said bonds, at the rate of ninety per cent. of the par or face value thereof, and the interest accrued thereon, and the said board having examined the same, and the further consideration thereof having been continued to the 6th day of January, 1891, at the regular meeting of said board, and having again on said last-named day, been again continued to the adjourned session of said regular meeting on the 17th day of January, 1891. And the said board having duly considered said sealed proposal, and it appearing that the same is the highest and best bid for said bonds, and that said W. A. Ray is a responsible bidder; therefore, it is by said board

Resolved, That the said bid of said W. A. Ray for the purchase of one hundred and fifty thousand dollars, of the par or face value of said bonds, at the rate of ninety per cent. of the par or face value of said bonds, and the interest accrued thereon, be and the same is hereby accepted by this board, and that the purchase of the same at the rate aforesaid, be and the same is hereby awarded to him. That said bonds, or any number thereof, duly signed by the president and secretary of this board, and attested with its seal, be delivered to said W. A. Ray, at his request and upon his payment therefor, at the rate aforesaid. That said board, with the consent of W. A. Ray, now given to said board, reserves the right to rescind the foregoing award of purchase and acceptance of said bid, so far as the same relates to any of the said bonds which shall not, at the time of such re-cission have been delivered to the said W. A. Ray, and the purchase price received therefor. That the coupons which shall have matured at the time of the delivery of any of said bonds

be detached before the delivery of said bonds, and that said coupons shall be cancelled.

Upon request of said W. A. Ray, in writing, it was unanimously ordered that the president and secretary forward at once
419 to the Anglo-California Bank of San Francisco, California, out of the bonds this day sold to said W. A. Ray, bonds to the amount of twenty thousand dollars, par or face value, with instructions to said bank to deliver the same to I. R. Wilbur, or to his order, upon the payment to said bank for the said Tulare irrigation district, of the purchase price therefor, to wit: ninety per cent. of the par or face value of said bonds, and the interest accrued thereon, since the 1st day of January, 1891. This order being made upon the express condition, that said W. A. Ray shall not be held responsible for any loss or injury occurring to any of said bonds in carrying out the order, and that he shall not be liable for any costs or expense attending the same."

To which said offer plaintiff objected on the ground that said evidence was immaterial, irrelevant and incompetent, and the court sustained such objection, to which ruling, the defendant and intervenors, each and severally, and respectively, then and there duly excepted. (Exception No. 14.)

The foregoing contains and comprises all the testimony and evidence offered or admitted on the trial of this action, and no other evidence was offered or admitted. The cause was thereupon argued and submitted to the court for consideration and decision.

Thereafter, on the 25th day of March, 1901, the court announced its decision in this cause, in favor of the plaintiff and against the defendant and intervenors, and ordered that judgment be entered for plaintiff, and plaintiff's attorney prepare and submit to the court, findings in accordance with the conclusions of the court; to which decision the defendant and intervenors each and severally and respectively, then and there duly excepted. (Exception No. 15.)

And thereafter, on the 30th day of March, 1901, the court made and filed herein its findings, in the words and figures following:

420 "In the Circuit Court of the United States, in the Ninth Circuit, in and for the Southern District of California.

ALBERT SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT, a Corporation, Defendant. } No. 859.

This cause came on regularly for trial before the court, sitting without a jury, upon the issues joined herein, the plaintiff and intervenors herein, having by stipulation in writing signed by them and filed herein, stipulated that the allegations of the complaint in intervention herein should be deemed to be denied, and a jury having been expressly waived by a stipulation in writing, filed herein, before the trial of this action, signed by the plaintiff and the defendant and the intervenors herein, the said cause was tried by the court upon the issues joined herein and argued and submitted to the court for decision. And the court being fully advised, finds for the plain-

tiff on all the issues joined herein and assesses the damages of plaintiff at the sum of thirteen thousand one hundred and eighty-five dollars, and finds that he is entitled to judgment against the Tulare Irrigation District, for the said sum, and hereby orders that judgment be entered herein, that plaintiff have and recover of and from said Tulare Irrigation District, the said sum of thirteen thousand one hundred and eighty-five dollars.

Dated March 30th, A. D. 1901.

OLIN WELLBORN,
United States District Judge.

(Endorsed:) United States circuit court, ninth circuit, southern district of California. Alfred Shepard, plaintiff, *vs.* Tulare Irrigation District, a corporation, defendant. Findings. Filed
421 March 30th, 1901. Wm. Van Dyke, clerk."

That thereupon, the defendant and intervenors duly excepted to the making of said findings. (Exception No. 16.)

Thereafter, in due time, defendant and intervenors moved the court for a new trial of said cause, upon the following grounds:

1. Insufficiency of the evidence to justify the findings and decision herein.

2. Errors in law occurring at the trial and excepted to by said defendant and intervenors.

Stating in said motion that said motion would be made on the minutes of the court and the pleadings and the proceedings on file in the clerk's office, and that on said grounds, minutes, pleadings and proceedings, the said defendant and intervenors moved the court to set aside and vacate the decision and findings hereinbefore made, and to grant a new trial of this action. And pending said motion, defendant and intervenors duly moved the court to set aside and vacate the said findings and to make and enter findings in favor of the defendant, on the ground that there was no evidence whatever, to justify the findings aforesaid, in favor of the plaintiff, and that on all the evidence in the case, findings should be made in favor of the defendant and intervenors.

Thereupon, the court denied said motion, to which ruling the defendant and intervenors, each and severally, and respectively, then and there duly excepted. (Exception No. 17.)

The above is presented as the bill of exceptions on behalf of the defendant and intervenors.

Dated April 19th, 1901.

C. L. RUSSELL,
G. W. ZARTMAN,
R. M. F. SOTO,
GEORGE MAXWELL,
By JOHN GARBER,
JOHN GARBER,
Attorneys for Defendant.

422 C. L. RUSSELL AND
G. W. ZARTMAN,
By JOHN GARBER,
Attorneys for Intervenors.

The foregoing is hereby allowed, settled, and approved, as defendant and intervenors' bill of exceptions in the above-entitled action. Exceptions therein noted were taken in all respects as provided by law, and the rules of this court.

Time for presenting and filing the foregoing bill of exceptions was duly extended and continued by the written stipulation of plaintiff's attorneys and by the orders of court, duly entered, to the present day.

Dated April 25th, 1901.

OLIN WELLBORN, *Judge.*

Service by copy of the foregoing bill of exceptions is hereby admitted this 19th day of April, 1901, within the time granted and allowed by our written stipulations and orders of court.

Dated April 19, 1901.

S. F. LEIB,
Attorney for Plaintiff.

Time for presentation of amendments to the foregoing bill of exceptions is hereby waived, and said bill of exceptions may be presented to the judge of the circuit court, who tried said cause, for allowance and settlement, this — day of ——, 1901, and may be signed as presented.

S. F. LEIB,
Attorney for Plaintiff.

(Endorsed:) No. 8590. U. S. circuit court southern district of California. Alfred Shepard plaintiff *vs.* Tulare Irrigation District defendant. George G. Kelly *et al.*, intervenors. Bill of exceptions. Filed Apr. 25 1901 Wm. M. Van Dyke clerk. —— ——, deputy.

423 Charles Sleeper, Esq., Tulare, June 23d*h*, 1900.

DEAR SIR: I received your letter of yesterday telling me that my proposition was accepted and that you would send $1,000.00 to the Bank of Tular- to my credit provide*t* the deed in escrow is accepted.

As to m*i* being married, I have to state that I am not nor ever was, in any way. I name Mr. G. Garibaldi of Merced my executor to act in my place if anything should happen to me. I received a letter from Mr. McNamara ap-rising me that Mr. Treadwell offered to me the same amount in cash for my interest in the Queirolo claim, of course I hold myself bound to you so far.

Yours truly, BENNO W. JAUCHIUS.

424 In the Superior Court of the County of Tulare, State of California. Probate.

In the Matter of the Estate of BENNO W. JAUCHIUS, Deceased.

Letters testamentary, C. C. P., sec. 1360.

STATE OF CALIFORNIA, } ss:
County of Tulare, }

The last will of Benno W. Jauchius, deceased, a copy of which is hereto annexed, having been proved and recorded in the superior court of the county of Tulare, State of California, G. Garibaldi who is named herein as such, is hereby appointed executor.

Witness John Cutler, Jr., clerk of the superior court of the county of Tulare, with the seal of the court affixed, the 31st day of December, A. D. 1900.

By order of the court.

[SEAL.] JOHN CUTLER, JR., *Clerk*,
By H. B. McCLURE,
Deputy Clerk.

STATE OF CALIFORNIA, } ss:
County of Tulare, }

I do solemnly swear that I will support the Constitution of the United States, and the constitution of the State of California, and that I will faithfully perform, according to law, the duties of executor of the last will and testament of Benno W. Jauchius deceased.

G. GARIBALDI.

425 Subscribed and sworn to before me this 31st day of December, 1900.

[SEAL.] JOHN CUTLER, JR., *Clerk*,
By H. B. McCLURE,
Deputy Clerk.

Read instructions on the back of these letters.

Instructions to Executors.

1st. Upon the receipt of letters, take into your possession immediately all the estate of decedent, real and personal, and collect all debts due to the decedent or to the estate. C. C. P. 1581.

2nd. Make and return to the court, as soon as practicable, a true inventory and appraisement of all the estate, including the homestead, if any, which has come to your possession or knowledge. C. C. P. 1443.

3rd. Make immediate application to the court for an order of publication of notice to the creditors of the estate to present their claims. C. C. P. 1490.

4th. Upon the expiration of the time for publication of notice to creditors, file a copy thereof, with the affidavit of the printer, showing due publication. C. C. P. 1492.

5th. Pay no claim until the same has been properly presented, allowed, approved, filed and ordered paid by the court. (C. C. P. 1494–'6.) Pay no amount however small without taking a receipt in writing.

6th. Sell no property, real or personal, of decedent without an order of court. C. C. P. 1517.

7th. Within thirty days after the expiration of the time mentioned in the notice to creditors, within which claims must be presented, render a full account and report of your administration to the court, and file therewith vouchers for all charges, debts, claims and expenses which you have paid. C. C. P. 1628, 1631.

426 8th. Upon the settlement of your account, obtain an order of the court for the payment of the debts which have been allowed. C. C. P. 1647.

9th. All costs incurred by reason of your neglect to comply with your duty, and in enforcing such compliance, will be charged to you, and not to the estate.

10th. In case of doubt as to how you should act, apply to your attorney or the court for advice and instructions.

STATE OF CALIFORNIA, } *ss:*
County of Tulare, }

I, John Cutler, Jr., county clerk of the said county of Tulare, State of California, and *ex officio* clerk of the superior court in and for said Tulare county, hereby certify the within and foregoing to be a full, true and correct copy of letters testamentary issued in the therein-entitled matter, as the same remains of record and on file in the office of said clerk. I further certify that said letters have not been revoked.

In witness whereof, I have hereunto set my hand and affixed the seal of said court this 21st day of December, A. D., 1901.

[SEAL.] JOHN CUTLER, JR., *Clerk.*

(Endorsed:) No. 1105. Recorded M. B. C. page 115. Superior court, county of Tulare, department No. —. In the matter of the estate of Benno W. Jauchius, deceased. Letters testamentary.

(Endorsed:) Filed Dec. 31st, 1900. John Cutler, Jr., clerk. By H. B. McClure, deputy clerk, J. W. Knox, attorney for executor. Merced.

No. 859. U. S. circuit court, ninth circuit, southern district of California. Alfred Shepard *vs.* Tulare Irrigation District *et al.*, Certified copy of will of B. W. Jauchius, & of letters testamentary. Filed Dec. 23 1901 Wm. M. Van Dyke, clerk, Chas. N. Williams, deputy.

427 MERCED, CAL., *December* 21*st*, 1901.

Messrs. Russell and Zartman, attorneys-at-law, are hereby authorized to have G. Garibaldi as executor of the will of B. W. Jauchius, deceased, substituted as intervenor in the case of Spehard *vs.* Tulare Irrigation District defendant, and G. G. Kelly and B. W.

Jauchius intervenors in place and stead of said B. W. Jauchius intervenor, deceased, and are further authorized to join the name of said G. Garibaldi, as such executor, with the defendant and said other intervenor in suing out a writ of error to the Supreme Court of the United States in said action, and to appear as attorneys for said executor in said proceeding under the original agreement entered into by B. W. Jauchius, deceased, and on the same terms and conditions as provided in said original agreement as to compensation; and are further authorized to sign the name of G. Garibaldi as said executor to the cost bond, as one of the principals on said writ of error proceeding; and are further authorized to state to the Federal court, that we consent to an order substituting said G. Garibaldi, as such executor, as an intervenor in place and stead of said B. W. Jauchius.

G. GARIBALDI,
As Executor of the Will of B. W. Jauchius, Deceased.

J. W. KNOX,
As Attorney for G. Garibaldi,
Executor of the Will of W. B. *Jauchius, Deceased.*

(Endorsed:) No. 859. U. S. circuit court, ninth circuit, southern district of California. Alfred Shepard, plaintiff, *v.* Tulare Irrigation District, defendant, George G. Kelly *et al.*, intervenors. Consent of executor of will of B. W. Jauchius to substitute and to join as plaintiff in error. Filed Dec. 23 1901 Wm. M. Van Dyke, clerk Chas N. Williams, deputy.

428 In the Circuit Court of the United States, Ninth Circuit, in and for the Southern District of California.

ALFRED SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT, Defendant.

Petition for Writ of Error.

Tulare Irrigation District, defendant in the above-entitled action, and George G. Kelly, intervenor in said action, and G. Garibaldi, executor of the last will of B. W. Jauchius, deceased, the other intervenor in said action respectfully show:

That on the 30th day of March, 1901, said court rendered judgment in favor of the plaintiff in said action and against said defendant and intervenors George G. Kelly and B. W. Jauchius, whereby it was adjudged that said plaintiff recover from the defendant the sum of $13,185; that thereafter said B. W. Jauchius died leaving a last will in which said G. Garibaldi was named as executor; that thereafter said will was admitted to probate by the superior court of the county of Tulare, State of California, and letters testamentary were issued to said G. Garibaldi; that said G. Garibaldi has filed in this court a certified copy of said letters testamentary.

That in the above-entitled action the claim was made by said de-

fendant and said intervenors that certain statutes of the State of California were in contravention of the Constitution of the United States, and said parties set up claims of rights alleged by them to be protected by said Constitution, and alleged various acts upon which plaintiff's cause of action rested to be in violation of said Constitution; that the above-entitled cause involves the
429 construction and application of said Constitution.

And said defendant, Tulare Irrigation District, and said intervenor, George G. Kelly, and said G. Garibaldi, executor of the last will of said intervenor B. W. Jauchius, deceased, feeling aggrieved by the judgment of the court entered in said cause as aforesaid,

Now come, by their attorneys, and petition said court for an order allowing said defendant and said intervenor, George G. Kelly and said G. Garibaldi, executor of the last will of said intervenor B. W. Jauchius, deceased, to prosecute a writ of error to the Supreme Court of the United States under and according to the laws of the United States in that behalf made and provided; and also, that an order be made fixing the amount of security for costs with said defendant, and said intervenor, George G. Kelly, and said G. Garibaldi, executor of the last will of said intervenor B. W. Jauchius, deceased, shall give and furnish upon said writ of error.

Wherefore, petitioners pray that they be allowed to prosecute a writ of error to said, the honorable Supreme Court of the United States; to the end that the said judgment may be reversed which they hereby pray may be accordingly done.

Dated, December 23rd, 1901.

JOHN GARBER,
G. W. ZARTMAN.
C. L. RUSSELL,
GEORGE H. MAXWELL,
R. M. F. SOTO,
Attorneys for Defendant, Tulare Irrigation District.

G. W. ZARTMAN,
C. L. RUSSELL,
JOHN GARBER,
Attorneys for Intervenor George G. Kelly and G. Garibaldi, Executor of the Last Will of Intervenor B. W. Jauchius, Deceased.

430 (Endorsed:) No. 859. In the circuit court of United States, ninth circuit, in and for the southern district of California. Alfred Shepard, plaintiff, *vs.* Tulare Irrigation District, defendant. Petition for writ of error. Filed Dec. 23 1901 Wm. M. Van Dyke, clerk Chas. N. Williams, deputy

431 In the Supreme Court of the United States.

TULARE IRRIGATION DISTRICT, GEORGE G. KELLY, and G. GARIBALDI, Executor of the Last Will of B. W. Jauchius, Deceased, Plaintiffs in Error,

vs.

ALFRED SHEPARD, Defendant in Error.

Assignment of Errors.

Now come Tulare Irrigation District and George G. Kelly and G. Garibaldi, executor of the last will of B. W. Jauchius, deceased, the plaintiffs in error herein, by their attorneys, and assign and specify the following as errors upon which they will rely, and which they will urge in their writ of error in the above-entitled cause.

I.

The court erred in overruling and not sustaining so much of the demurrer interposed by the defendant to the complaint, on the ground that said complaint does not state facts sufficient to constitute a cause of action.

II.

The court erred in holding and deciding that the said complaint is sufficient in law to support the judgment herein.

III.

The court erred in admitting in evidence the first twelve (12) paragraphs of the stipulation made by the parties hereto, as to the truth of certain facts, filed in said action on the 29th day of March, A. D. 1900, which twelve paragraphs, in substance,
432 severally admit the following facts to be true.

1st paragraph.

That plaintiff is and for ten years has been a citizen and resident of the State of Michigan, and that David Shepard and F. G. Shepard for ten years have also been residents and citizens of the said State of Michigan.

2nd paragraph.

That under the provisions of the act of the legislature of the State of California, entitled: "An act to provide for the organization and government of irrigation districts, and to provide for the acquisition of water and other property and for the distribution of water for irrigation purposes," approved March 7th, 1887, an effort was made in the county of Tulare, State of California, to form an irrigation district, and such proceedings in that behalf were had that what purported to be a certified copy of the order of said board of supervisors, was duly filed with the county recorder of said county on the 14th day of September, A. D. 1889, a certified copy

of which certified copy is annexed to said stipulation, marked "A," which is an order made by the board of supervisors of the county of Tulare, and entered upon its minutes of the 2nd day of September, 1889, setting forth the result of an election held on the 24th day of August, 1889, within the proposed boundaries of said Tulare irrigation district, to vote on the question whether or not said district should be organized, designating the persons elected to the various offices prescribed by said act of the legislature, of March 7th, 1887, and declaring said district organized, under the name of "Tulare Irrigation District."

That the persons declared by said order of the board of supervisors to have been elected as officers of said district, immediately thereafter purported to organize as such officers and thereupon entered upon their duties as such officers the same as if said district had been legally organized, and as if there had been legally
433 elected such officers, and that they and their successors in office have ever since continued to act as such officers, and to maintain the name of "Tulare Irrigation District," and in its name have caused the defendant to act as if it was in every respect legally organized as an irrigation district, under said act of the legislature, and in that behalf has at all such times had the name of Tulare Irrigation District printed upon a sign above the door, in front of an office in which the archives and papers of said defendant are kept; and its board of directors have met from time to time in such room, from the time of such purported organization thereof until the present time, weekly, and sometimes oftener, averaging twice a month.

And in the years 1891, 1892 and 1893, its board of directors purported to issue bonds of such Tulare irrigation district in the sum of $500,000, being 1000 bonds of the face value of $500 each, as hereinafter stated, and levied assessments on the property claimed to be embraced in said district, purporting to act in so doing under the said act of the legislature, and previous to July 1st, 1896, it assessed, levied and collected taxes upon the lands claimed to be in such district of over $100,000, and paid the same out as interest upon such bonds; that it has engaged in litigation as plaintiff in — suits, — of them before the issuance of said bonds, and therein alleged that it was a corporation under the provisions of the said act of the legislature, and from said time of its said purported organization until the present time, whatever it has done and performed, it has done and performed in the same manner as if it had been legally organized as such district in full compliance with the law, and so continued to act and hold itself out as such corporation organized under said law.

3rd paragraph.

That the lands embraced in the limits of said district are and always have been in the said county of Tulare.

434 4th paragraph.

That after certain proceedings had been had by the board of directors of said defendant, the said defendant called a special election of the electors of said district, at which should be submitted the question whether or not bonds of said district should be issued to the amount of $500,000; that such an election was held on June 7th, 1899; that the same was carried; and that on or about July 1st, 1890, the board of directors of said district ordered that bonds of said district in the sum of $500,000 be issued, divided into 1000 bonds of $500 each, numbered consecutively from one to one thousand.

5th paragraph.

That thereupon the said board of directors caused 1000 bonds of said district to be printed, and each of them, together with the coupons thereto attached, were in the form as alleged in the complaint herein, a copy of one of which bonds, numbered 400, is annexed to the complaint marked "Exhibit A."

6th paragraph.

That said bonds were all disposed of by the said board of directors during the years 1891, 1892 and 1893.

7th paragraph.

That as a result of the disposal of said bonds the defendant was enabled to and did build and construct an irrigation system, whereby it irrigated lands within the district, but not the whole thereof at any time.

8th paragraph.

That the interest coupons of each of said bonds were promptly paid every six months until July 1st, 1896.

9th paragraph.

That no one ever brought an action to prevent the issuance of any of said bonds.

10th paragraph.

That no suit or action was ever brought to annul or cancel
435 or have declared void any of said bonds until after the year 1896, nor was any suit or action ever brought until after the year 1895 wherein the validity of any of said bonds was in anyway questioned, nor until after the year 1896, wherein the validity of any of said bonds 342 to 386 inclusive were in any way questioned except as to the constitutionality of the said act of the said legislature of March 7th, 1887, which action involving such constitutionality of such law was brought in November, A. D., 1895.

11th paragraph.

That the plaintiff, at the commencement of this action, was the holder of the coupons in the complaint alleged to be held and owned by him, and on which this action was brought.

12th paragraph.

That the plaintiff became the holder of the coupons on which this action is brought, some by purchase directly and others by mesne conveyance, in good faith, for the full value thereof, in the usual course of business, without any actual notice or knowledge of any defect, infirmity or invalidity of the bonds, or of any of them, to which said coupons, or any thereof, were attached, and without any actual notice or knowledge of the non-performance or non-observance of any requirements of the law necessary to their validity, and so became the holder thereof under the full belief that all the requirements of the law necessary to their validity had been performed and observed and complied with.

IV.

Error in admitting in evidence a certified copy of the judgment-roll in the matter of the Tulare Irrigation District. Said judgment-roll is composed of documents in substance as follows:

(1.) A petition by the board of directors of Tulare irrigation
436 district to the superior court of Tulare county, setting forth the various proceedings which had been taken with a view to the organization of the Tulare irrigation district and the issuance of bonds by said district, and praying that said proceedings be judicially examined, approved and confirmed by the court.

(2.) An order by the superior court of Tulare county reciting the filing of the above-mentioned petition and ordering said petition set down for hearing and the giving of notice of the filing of said petition by publication and posting.

(3.) An affidavit of one Miles Ellsworth, showing the publication in the Weekly Tulare Register of the notice of the hearing of said petition.

(4.) An affidavit of one Edward Oakford, secretary of the board of directors of Tulare irrigation district, showing the posting of the notices of the hearing of said petition in the various precincts of said district.

(5.) The findings of fact and conclusions of law of said superior court in said confirmation proceedings, filed September 15, 1890. Said findings of fact set forth the taking of the various steps looking to the formation of the district, the election of officers and the issuance of bonds thereof, and the conclusions of law are to the effect that said district was regularly organized, and ever since its organization has been and still is a legal and valid irrigation district, and that all the proceedings for its organization are entitled to approval and confirmation; that the proceedings of the board of directors of said district providing for and authorizing the sale of the bonds of said district are legal and valid and entitled to approval and confirmation; and that the proceedings, orders and resolutions of said board for the issue of the bonds of said district and the order prescribing the form of such bonds, and the order for the sale of such bonds, are legal and valid and entitled to ap-

proval and confirmation, and that said board of directors is
437 entitled to a judgment confirming all the proceedings mentioned in said petition.

(6.) The judgment of said court in said confirmation proceeding, dated September 15, 1890, ordering, adjudging and decreeing the proceedings leading up to the organization of said district, and the proceedings leading up to the issue of the bonds of said district, to be legal and valid, and that said district is a legal and valid irrigation district, having power to issue and sell the bonds of said district to the amount of $500,000, and that the bonds issued by said district are legal and valid and in proper form.

V.

The court erred in sustaining the objection of plaintiff to the admission in evidence of the 13th paragraph of said stipulation and the facts therein set forth, and to the admission in evidence of Exhibit B therein referred to, and in refusing to admit and excluding said 13th paragraph and the facts stated therein and said Exhibit B, all of which were offered in evidence by the defendant and intervenors. Said 13th paragraph is in words and figures as follows:

"That a petition, a copy of which is hereunto annexed marked 'Exhibit B,' was on the 1st day of July, 1889, filed with and presented to the board of supervisors of Tulare county at a regular meeting of said board, and no other petition for the organization of Tulare irrigation district has ever been presented to or filed with said board of supervisors which said petition was printed and published for two weeks during the month of June, 1889, in a newspaper printed and published in said Tulare county, to wit: The Weekly Tulare Register."

Said Exhibit B is a copy of a petition presented to the board of supervisors of Tulare county by parties whose names are signed to said petition and claiming to be freeholders owning land within the proposed district; in said petition it is stated that the petitioners
desire to provide for the irrigation of the land within the
438 proposed district, all of which is susceptible to one mode of irrigation by conveying the waters of Kaweah river to said land; petitioners pray that the district described in the petition be organized as an irrigation district under the act of March 7, 1887 (the Wright act), and the petition contains a description by metes and bounds of the boundaries of the proposed district.

VI.

Error in sustaining the objection of plaintiff to the admission in evidence of the 14th paragraph of said stipulation and the facts therein set forth, and to the admission of Exhibit C therein referred to, and in refusing to admit and excluding said 14th paragraph and the facts stated therein and said Exhibit C, all of which were offered in evidence by said defendant and intervenors. Said paragraph 14 is in words and figures as follows, to wit:

"That during the time said petition was printed and published in said newspaper, and immediately following and below said peti-

tion, as published, and in the same column of the paper, was printed a notice, a copy of which notice is hereunto annexed and marked 'Exhibit C,' and no other notice of the hearing of said or any petition for the organization of Tulare irrigation district, was ever given or published. Said notice was in the same type as said petition in said publication, and enclosed therewith, between two blank lines across the column, the first at the head of such petition, and the last at the end of such notice."

Said Exhibit C is in words and figures as follows:

"*Notice.*

"Pursuant to the statutes in such cases made and provided, notice is hereby given that the above and foregoing petition will be presented to the board of supervisors in and for the county of Tulare, at their first regular meeting, in the month of July, 1889, to wit:
on Monday, the 1st day of July, 1889, at which time any
439 person or persons desiring so to do, may present their objections, if any they have, why said petition should not be granted."

VII.

Error in sustaining the objection of plaintiff to the admission in evidence of the 15th paragraph of said stipulation and the facts therein set forth, and to the admission of Exhibit D therein referred to, and in refusing to admit and excluding said 15th paragraph and the facts stated therein and said Exhibit D, all of which were offered in evidence by said defendant and intervenors. Said 15th paragraph is in words and figures as follows, to wit:

"That at the time of the presentation of said petition, the said board of supervisors caused to be entered on the minutes of said board, the order set forth in paragraph VIII of page 17 of the defendant's answer herein, and on July 6th, 1889, said board caused to be entered on its said minutes, an order, a copy of which is alleged in said paragraph VIII to have been entered by said board on that date, and thereafter, on July 11th, 1889, said board caused to be entered on its minutes the order hereunto annexed, marked 'Exhibit D.'"

Said order referred to in said 15th paragraph as appearing on page 17 of the defendant's answer, is an order entered on the minutes of the board of supervisors of Tulare county on July 1, 1889, and is to the effect that a petition praying for the formation of an irrigation district to be known as the Tulare irrigation district having been filed and presented to the board, and the necessary bond having been filed with said petition and it satisfactorily appearing to the board that due notice of the presentation of said petition has been given as required by law, and certain persons having appeared and asked to have their lands excluded from the district, thereupon the board ordered that the
hearing of the said petition be set for Saturday, July 6, 1889,
440 at 10 a. m. Said order referred to as entered on July 6th, is an order stating that the board occupied the day in hearing testimony to have lands excluded from said district.

Said Exhibit D referred to in said 15th paragraph is a copy of an order of the board of supervisors of Tulare county made after the hearing of the petition for the formation of the Tulare irrigation district. Said order recites the proceedings taken in connection with the petition, including the publication of the notice of the hearing thereof and the fact that certain parties had been heard upon the question whether their lands should be excluded from the district. Said order then proceeds to declare and establish the boundaries of the proposed irrigation district and describes them by metes and bounds, with a specific description of certain lands excepted and taken out of the proposed district as thus described. The order further provides for the division of the proposed district into five divisions, and describes the boundaries of each division. It further orders an election for the purpose of determining whether the proposed district shall be organized, and names the time and the various polling places. The order further provides for notice of such election and names the offices of the proposed district which are to be filled by officers to be voted for at said election, and concludes by describing five election precincts.

VIII.

Error in sustaining plaintiff's objection to the admission in evidence of paragraph 16th of said stipulation and the facts therein set forth, and to the admission of Exhibit E therein referred to, and in refusing to admit and excluding said 16th paragraph and the facts stated therein and said Exhibit E, all of which were offered in evidence by said defendant and intervenors. Said paragraph 16 is in words and figures as follows, to wit:

441 "That on the 2nd day of September, 1889, the clerk of said board of supervisors entered upon their minutes an order purporting to have been passed by said board, a true copy of which order in full, is hereunto annexed, and marked "Exhibit E."

Said Exhibit E referred to in said 16th paragraph is a copy of an order of the board of supervisors of Tulare county, by which said board of supervisors declare the result of their canvass of the election held for the purpose of voting for and against the organization of the Tulare irrigation district and officers thereof. In this order the supervisors make a statement of the votes cast for and against the organization of the district, showing the result to be in favor of organizing the district and a further statement of the number of votes cast for the various officers of the district. The order then declares the territory embraced within certain limits, which are specifically described by metes and bounds, to be an irrigation district, duly organized under the name and style of Tulare irrigation district, and further declares the election of certain named parties as officers of the district.

IX.

Error in sustaining the objection of plaintiff to the admission in evidence of the 17th paragraph of said stipulation and the facts therein set forth, and in refusing to admit and excluding said 17th

paragraph and the facts stated therein, all of which were offered in evidence by said defendant and intervenors. Said 17th paragraph is in words and figures as follows, to wit;

"That said petition so presented July 1st, 1889, was not copied or set out at length in the minutes of the said board of supervisors, nor in any way referred to or identified than as appears in the orders of said board hereinbefore set forth and hereto annexed."

X.

Error in sustaining objection of plaintiff to the admission
442 in evidence of the 18th paragraph of said stipulation and the facts therein set forth, and to the admission of Exhibit A therein referred to, and in refusing to admit and excluding said 18th paragraph and the facts stated therein and the said Exhibit A, all of which were offered in evidence by said defendant and intervenors.

Said paragraph 18 is in words and figures as follows, to wit:

"That said board caused to be filed for record in the office of the recorder of said Tulare county, on September 14, 1889, the certified copy of the order hereunto annexed marked 'Exhibit A,' heretofore referred to, and no order of said board relating to the organization of said district was ever filed in the office of the county recorder of said Tulare county. That an election was called and held as recited in said 'Exhibit A,' of which due notice was given, and in such notice the lands of such proposed district were the same as those recited in said 'Exhibit A,' as constituting such proposed district."

Said Exhibit A is a copy of an order of the board of supervisors, entered on its minutes on September 2d, 1889, declaring said district organized and designating the persons elected as officers thereof.

XI.

Error in sustaining the objection of plaintiff to the admission in evidence of the 19th paragraph of said stipulation and the facts therein set forth, and in refusing to admit and excluding said 19th paragraph and the facts stated therein, all of which were offered in evidence by said defendant and intervenors.

Said 19th paragraph is in words and figures as follows, to wit:

"No other orders or proceedings relating to the organization of said district, were ever made or had by said board of supervisors, than as herein stipulated, and as recited in said exhibits."

443 XII.

Error in sustaining the objection of plaintiff to the admission in evidence of the 20th paragraph of said stipulation and the facts therein set forth, and in refusing to admit and excluding said 20th paragraph and the facts stated therein, all of which were offered in evidence by said defendant and intervenors. Said paragraph 19 is in words and figures as follows, to wit:

"That G. G. Kelly and B. W. Jauchius are the owners of the lands alleged in said complaint in intervention, as therein stated;

that said G. G. Kelly is a citizen of the United States and a resident of the State of Massachusetts, and that said B. W. Jauchius is a citizen of the United States and a resident of the State of California."

XIII.

Error in sustaining the objection of plaintiff to the introduction in evidence of a certified copy of the judgment-roll in the matter of the Tulare irrigation district. Said judgment-roll is composed of documents in substance as follows:

(1.) A petition by the board of directors of Tulare irrigation district to the superior court of Tulare county, setting forth the various proceedings which had been taken with a view to the organization of the Tulare irrigation district and the issuance of bonds by said district, and praying that said proceedings be judicially examined, approved and confirmed by the court.

(2.) An order by the superior court of Tulare county reciting the filing of the above-mentioned petition and ordering said petition set down for hearing and the giving of notice of the filing of said petition by publication and posting.

(3.) An affidavit by one Miles Ellsworth, showing the publication in the Tulare Weekly Register of the notice of the hearing of said petition.

444 (4.) An affidavit of one Edward Oakford, secretary of the board of directors of Tulare irrigation district, showing the posting of the notices of the hearing of said petition in the various precincts of said district.

(5.) The findings of fact and conclusions of law of said superior court in said confirmation proceedings, filed September 15, 1890. Said findings of fact set forth the taking of the various steps looking to the formation of the district, the election of officers and the issuance of bonds thereof, and the conclusions of law are to the effect that said district was regularly organized, and ever since its organization has been and still is a legal and valid irrigation district, and that all the proceedings for its organization are entitled to approval and confirmation; that the proceedings of the board of directors of said district providing for and authorizing the sale of the bonds of said district are legal and valid and entitled to approval and confirmation; and that the proceedings, orders and resolutions of said board for the issue of the bonds of said district and the order prescribing the form of such bonds, and the order for the sale of such bonds, are legal and valid and entitled to approval and confirmation, and that said board of directors is entitled to a judgment confirming all the proceedings mentioned in said petition.

(6.) The judgment of said court in said confirmation proceeding, dated September 15, 1890, ordering, adjudging and decreeing the proceedings leading up to the organization of said district, and the proceedings leading up to the issue of the bonds of said district, to be legal and valid, and that said district is a legal and valid irrigation district, having power to issue and sell the bonds of said district to the amount of $500,000, and that the bonds issued by said district are legal and valid and in proper form.

(7.) An answer of B. W. Jauchius, J. L. Gould, George C.
445 Kelly and Ralph Jones, to the said petition in said confirmation proceeding. Said answer contains denials of the various allegations in said petition and sets up the invalidity of the proceedings leading to the organization of the district and the invalidity of the proceedings leading up to the issuance of the bonds of said district, upon the various grounds specifically set forth in said answer, and prays that the approval and confirmation of the proceedings had by the directors of said district as alleged in the petition be denied by the court, that a decree may be had that said district was illegally organized and void, and that all the bonds issued by said district as set forth in the petition be declared void.

(8.) The opinion of the judge of the superior court stating the reasons relied upon by the court for setting aside the decree of confirmation hereinabove mentioned, and for entering a decree declaring the district illegal.

(9.) Findings of fact and conclusions of law, dated November 23, 1898. These findings set forth various defects in the proceedings leading to the organization of the district and in the proceedings leading to the issuance of the bonds, and as conclusions of law from the facts thus found, the court finds that the Tulare irrigation district is not legally organized, is not a valid irrigation district, and that the proceedings of the board of directors in providing for and authorizing the issue and sale of the bonds of said district to the amount of $500,000, are illegal and void, and that the order prescribing the forms of such bonds and the order for the sale of such bonds to the amount of $200,000, are illegal and void, and that the petitioners in the confirmation proceeding are not entitled to a judgment approving and confirming the proceedings mentioned in their petition, and that the defendants are entitled to a judgment denying such confirmation and adjudging and decreeing
446 that the proceedings had for the formation of such district, and all proceedings had since such formation, including the issue and sale of its bonds, are illegal and void.

(10.) The judgment in said confirmation proceeding dated November 23, 1898, adjudging that the Tulare irrigation district never was and is not a duly or legally organized irrigation district; that all of the proceedings by which said district was organized are null and void; that all the proceedings taken by the directors of the district for the purpose of the issue and sale of the bonds of said district to the amount of $500,000, are null and void, and that approval of the aforementioned proceedings is denied; and further adjudging and decreeing that the said district never has been, since its attempted organization, and is not a legally organized irrigation district, and had and has no power to issue or sell the bonds of said district, create indebtedness or perform any of the functions of an irrigation district.

XIV.

The court erred in denying the motion on the part of the defendant and intervenors to set aside and vacate the findings in favor of

plaintiff, and to make and enter findings in favor of the defendant on the ground that there was no evidence whatever to justify the findings in favor of plaintiff.

JOHN GARBER,
C. L. RUSSELL,
G. W. ZARTMAN,
GEORGE H. MAXWELL,
R. M. F. SOTO,
Attorneys for Plaintiff in Error, Tulare Irrigation District.
C. L. RUSSELL,
G. W. ZARTMAN,
JOHN GARBER,
Attorneys for Plaintiffs in Error, Geo. G. Kelly and G. Garibaldi, Executor of the Will of B. W. Jauchius, Deceased.

447 In the Supreme Court of the United States.

TULARE IRRIGATION DISTRICT, GEORGE G. KELLY, and G. GARIBALDI, Executor of the Last Will of B. W. Jauchius, Deceased, Plaintiffs in Error,

vs.

ALFRED SHEPARD, Defendant in Error.

Now come George G. Kelly and G. Garibaldi, executor of the last will of B. W. Jauchius, deceased, two of the plaintiffs in error herein, by their attorneys, —— ——, and assign and specify the following as errors upon which they will rely, and which they will urge in their writ of error in the above-entitled cause.

I.

The court erred in overruling and in not sustaining so much of the demurrer interposed by the defendant to the complaint, on the ground that said complaint does not state facts sufficient to constitute a cause of action.

II.

The court erred in holding and deciding that the said complaint is sufficient in law to support the judgment herein.

III.

The court erred in admitting in evidence the first twelve (12) paragraphs of the stipulation made by the parties hereto, as to the truth of certain facts, filed in said action on the 29th day of March, A. D., 1900, which twelve paragraphs, in substance, severally admit the following facts to be true:

1st paragraph.

That the plaintiff is and for ten years has been a citizen
448 and resident of the State of Michigan, and that David Shepard and F. G. Shepard for ten years have also been residents and citizens of the State of Michigan.

2nd paragraph.

That under the provisions of the act of the legislature of the State of California, entitled: "An act to provide for the organization and government of irrigation districts, and to provide for the acquisition of water and other property and for the distribution of water for irrigation purposes," approved March 7th, 1887, an effort was made in the county of Tulare, State of California, to form an irrigation district, and such proceedings in that behalf were had that what purported to be a certified copy of the order of said board of supervisors, was duly filed with the county recorder of said county on the 14th day of September, A. D. 1889, a certified copy of which certified copy is annexed to said stipulation, marked "A," which is an order made by the board of supervisors of the county of Tulare, and entered upon its minutes of the 2nd day of September, 1889, setting forth the result of an election held on the 24th day of August, 1889, within the proposed boundaries of said Tulare irrigation district, to vote on the question whether or not said district should be organized, designating the persons elected to the various offices prescribed by said act of the legislature, of March 7th, 1887, and declaring said district organized, under the name of "Tulare Irrigation District."

That the persons declared by said order of the board of supervisors to have been elected as officers of said district, immediately thereafter purported to organize as such officers and thereupon entered upon their duties as such officers the same as if said district had been legally organized, and as if there had been legally elected such officers, and that they and their successors in office have
449 ever since continued to act as such officers, and to maintain the name of "Tulare Irrigation District," and in its name have caused the defendant to act as if it was in every respect legally organized as an irrigation district, under said act of the legislature, and in that behalf has at all such times had the name of Tulare Irrigation District printed upon a sign above the door, in front of an office in which the archives and papers of said defendant are kept; and its board of directors have met from time to time in such room, from the time of such purported organization thereof until the present time, weekly, and sometimes oftener, averaging twice a month.

And in the years 1891, 1892 and 1893, its board of directors purported to issue bonds of such Tulare Irrigation District in the sum of $500,000, being 1000 bonds of the face value of $500 each, as hereinafter stated, and levied assessments on the property claimed to be embraced in said district, purporting to act in so doing under the said act of the legislature, and previous to July 1st, 1896, it assessed, levied and collected taxes upon the lands claimed to be in such district of over $100,000, and paid the same out as interest upon such bonds; that it has engaged in litigation as plaintiff in — suits, — of them before the issuance of said bonds, and therein alleged that it was a corporation under the provisions of the said act of the legislature, and from said time of its said purported organization until the present time, whatever it has done and performed, it has

done and performed in the same manner as if it had been legally organized as such district in full compliance with the law, and so continued to act and hold itself out as such corporation organized under said law.

3rd paragraph.

That the lands embraced in the limits of said district are and always have been in the said county of Tulare.

450 4th paragraph.

That after certain proceedings had been had by the board of directors of said defendant, the said defendant called a special election of the electors of said district, at which should be submitted the question whether or not bonds of said district should be issued to the amount of $500,000; that such an election was held on June 7th, 1889; that the said — was carried; and that on or about July 1st, 1890, the board of directors of said district ordered that bonds of said district in the sum of $500,000, be issued, divided into 1000 bonds of $500 each, numbered consecutively from one to one thousand.

5th paragraph.

That thereupon the said board of directors caused 1000 bonds of said district to be printed, and each of them, together with the coupons thereto attached, were in the form as alleged in the complaint herein, a copy of one of which bonds, numbered 400, is annexed to the complaint marked "Exhibit A."

6th paragraph.

That said bonds were all disposed of by the said board of directors during the years 1891, 1892 and 1893.

7th paragraph.

That as a result of the disposal of said bonds the defendant was enabled to and did build and construct an irrigation system, whereby it irrigated lands within the district, but not the whole thereof at any time.

8th paragraph.

That the interest coupons of each of said bonds were promptly paid every six months until July 1st, 1896.

9th paragraph.

That no one ever brought an action to prevent the issuance of any of said bonds.

451 10th paragraph.

That no suit or action was ever brought to annul or cancel or have declared void any of said bonds until after the year 1896, nor was any suit or action ever brought until after the year 1895 wherein the validity of any of said bonds was in any way questioned, nor

until after the year 1896, wherein the validity of any of said bonds 342 to 386 inclusive *were* in any way questioned except as to the constitutionality of the said act of the said legislature of March 7th, 1887, which action involving such constitutionality of such law was brought in November, A. D. 1895.

11th paragraph.

That the plaintiff, at the commencement of this action, was the holder of the coupons in the complaint alleged to be held and owned by him, and on which this action was brought.

12th paragraph.

That the plaintiff became the holder of the coupons on which this action is brought, some by purchase directly and others by mesne conveyance, in good faith, for the full value thereof, in the usual course of business, without any actual notice or knowledge of any defect, infirmity or invalidity of the bonds, or of any of them, to which said coupons, or any thereof, were attached, and without any actual notice or knowledge of the non-performance or non-observance of any requirements of the law necessary to their validity, and so became the holder thereof under the full belief that all the requirements of the law necessary to their validity had been performed and observed and complied with.

IV.

Error in admitting in evidence a certified copy of the judgment-roll in the matter of the Tulare Irrigation District. Said judgment-roll is composed of documents in substance as follows:

452 (1.) A petition by the board of directors of Tulare irrigation district to the superior court of Tulare county, setting forth the various proceedings which have been taken with a view to the organization of the Tulare irrigation district and the issuance of bonds by said district, and praying that said proceedings be judicially examined, approved and confirmed by the court.

(2.) An order by the superior court of Tulare county reciting the filing of the above-mentioned petition and ordering said petition set down for hearing and the giving of notice of the filing of said petition by publication and posting.

(3.) An affidavit of one Miles Ellsworth, showing the publication in the Tulare Weekly Register of the notice of the hearing of said petition.

(4.) An affidavit of one Edward Oakford, secretary of the board of directors of Tulare irrigation district, showing the posting of the notices of the hearing of said petition in the various precincts of said district.

(5.) The findings of fact and conclusions of law of said superior court in said confirmation proceedings, filed September 15, 1890. Said findings of fact set forth the taking of the various steps looking to the formation of the district, the election of officers and the issuance of bonds thereof, and the conclusions of law are to the effect that said district was regularly organized, and ever since its

organization has been and still is a legal and valid irrigation district, and that all the proceedings for its organization are entitled to approval and confirmation; that the proceedings of the board of directors of said district providing for and authorizing the sale of the bonds of said district are legal and valid and entitled to approval and confirmation; and that the proceedings, orders and resolutions of said board for the issue of the bonds of said district and the order prescribing the form of such bonds, and the order for the sale of such bonds, are legal and valid and entitled to
453 approval and confirmation, and that said board of directors is entitled to a judgment confirming all the proceedings mentioned in said petition.

(6.) The judgment of said court in said confirmation proceeding, dated September 15, 1890, ordering, adjudging and decreeing the proceedings leading up to the organization of said district, and the proceedings leading up to the issue of the bonds of said district, to be valid and legal and that district is a legal and valid irrigation district, having power to issue and sell the bonds of said district to the amount of $500,000, and that the bonds issued by said district are legal and valid and in proper form.

V.

The court erred in sustaining the objection of plaintiff to the admission in evidence of the 13th paragraph of said stipulation and the facts therein set forth, and to the admission in evidence of Exhibit B therein referred to, and in refusing to admit and excluding said 13th paragraph and the facts stated therein and said Exhibit B, all of which were offered in evidence by the defendant and intervenors. Said 13th paragraph is in words and figures as follows:

"That a petition, a copy of which is hereunto annexed marked 'Exhibit B,' was on the 1st day of July, 1889, filed with and presented to the board of supervisors of Tulare county at a regular meeting of said board, and no other petition for the organization of Tulare irrigation district has ever been presented to or filed with said board of supervisors which said petition was printed and published for two weeks during the month of June, 1889, in a newspaper printed and published in said Tulare county, to wit: the Weekly Tulare Register."

Said Exhibit B is a copy of a petition presented to the board of supervisors of Tulare county by parties whose names are signed to said petition and claiming to be freeholders owning land
454 within the proposed district; in said petition it is stated that the petitioners desire to provide for the irrigation of the land within the proposed district, all of which is susceptible to one mode of irrigation by conveying the waters of Kaweah river to said land; petitioners pray that the district described in the petition be organized as an irrigation district under the act of March 7, 1887 (the Wright act), and the petition contains a description by metes and bounds of the boundaries of the proposed district.

VI.

Error in sustaining the objection of plaintiff to the admission in evidence of the 14th paragraph of said stipulation and the facts therein set forth, and to the admission of Exhibit C therein referred to, and in refusing to admit and excluding said 14th paragraph and the facts stated therein and said Exhibit C, all of which were offered in evidence by said defendant and intervenors. Said paragraph 14 is in words and figures as follows:

"That during the time said petition was printed and published in said newspaper, and immediately following and below said petition, as published, and in the same column of the paper, was printed a notice, a copy of which notice is hereunto annexed and marked 'Exhibit C,' and no other notice of the hearing of said or any petition for the organization of Tulare irrigation district, was ever given or published. Said notice was in the same type as said petition in said publication, and enclosed therewith, between two blank lines across the column, the first at the head of such petition, and the last at the end of such notice."

Said Exhibit C is in words and figures as follows:

"*Notice.*

"Pursuant to the statutes in such cases made and provided, notice is hereby given that the above and foregoing petition will be
455 presented to the board of supervisors in and for the county of Tulare, at their first regular meeting, in the month of July, 1889, to wit: on Monday, the 1st day of July, 1889, at which time any person or persons desiring so to do, may present their objections, if any they have, why said petition should not be granted."

VII.

Error in sustaining the objection of plaintiff to the admission in evidence of the 15th paragraph of said stipulation and the facts therein set forth, and to the admission of Exhibit D therein referred to, and in refusing to admit and excluding said 15th paragraph and the facts stated therein and said Exhibit D, all of which were offered in evidence by said defendant and intervenors. Said 15th paragraph is in words and figures as follows, to wit:

"That at the time of the presentation of said petition, the said board of supervisors caused to be entered on the minutes of said board, the order set forth in paragraph VIII of page 17 of the defendant's answer herein, and on July 6th, 1889, said board caused to be entered on its said minutes, an order, a copy of which is alleged in said paragraph VIII to have been entered by said board on that date, and thereafter, on July 11th, 1889, said board caused to be entered on its minutes the order hereunto annexed marked 'Exhibit D.'"

Said order referred to in said 15th paragraph as appearing on page 17 of the defendant's answer, is an order entered on the minutes of the board of supervisors of Tulare county on July 1, 1889, and is to the effect that a petition praying for the formation of

an irrigation district to be known as the Tulare irrigation district having been filed and presented to the board, and the necessary bond having been filed with said petition and it satisfactorily appearing to the board that due notice of the presentation of
456 said petition had been given as required by law, and certain persons having appeared and asked to have their lands excluded from the district, thereupon the board ordered that the hearing of the said petition be set for Saturday, July 6, 1889, at 10 a. m. Said order referred to as entered on July 6th, is an order stating that the board occupied the day in hearing testimony to have lands excluded from said district.

Said Exhibit D referred to in said 15th paragraph is a copy of an order of the board of supervisors of Tulare county made after the hearing of the petition for the formation of the Tulare irrigation district. Said order recities the proceedings taken in connection with the petition, including the publication of the notice of the hearing hereof and the fact that certain parties had been heard upon the question whether their lands should be excluded from the district. Said order then proceeds to declare and establish the boundaries of the proposed irrigation district and describes them by metes and bounds, with a specific description of certain lands excepted and taken out of the proposed district as thus described. The order further provides for the division of the proposed district into five divisions, and describes the boundaries of each division. It further orders an election for the purpose of determining whether the proposed district shall be organized, and names the time and the various polling places. The order further provides for notice of such election and names the offices of the proposed district which are to be filled by officers to be voted for at said election, and concludes by describing the five election precincts.

VIII.

Error in sustaining plaintiff's objection to the admission in evidence of paragraph 16th of said stipulation and the facts therein set forth, and to the admission of Exhibit E therein referred to, and in refusing to admit and excluding said 16th paragraph and the facts stated therein and said Exhibit E, all of which were offered in evidence by said defendant and intervenors. Said paragraph 16 is in words and figures as follows, to wit:

457 "That on the 2nd day of September, 1889, the clerk of said board of supervisors entered upon their minutes an order purporting to have been passed by said board, a true copy of which order in full, is hereunto annexed, and marked 'Exhibit E.'"

Said Exhibit E referred to in said 16th paragraph is a copy of an order of the board of supervisors of Tulare county, by which said board of supervisors declare the result of their canvass of the election held for the purpose of voting for and against the organization of the Tulare irrigation district and officers thereof. In this order the supervisors made a statement of the votes cast for and against the organization of the district, showing the result to be in favor of organizing the district, and a further statement of the

number of votes cast for the various officers of the district. The order then declares the territory embraced within certain limits, which are specifically described by metes and bounds, to be an irrigation district, duly organized under the name and style of Tulare Irrigation District, and further declares the election of certain named parties as officers of the district.

IX.

Error in sustaining the objection of plaintiff to the admission in evidence of the 17th paragraph of said stipulation and the facts therein set forth, and in refusing to admit and excluding said 17th paragraph and the facts stated therein, all of which were offered in evidence by said defendant and intervenors. Said 17th paragraph is in words and figures as follows, to wit:

"That said petition so presented July 1st, 1889, was not copied or set out at length in the minutes of the said board of supervisors, nor in any way referred to or identified than as appears in the orders of said board hereinbefore set forth and hereto annexed."

458

X.

Error in sustaining objection of plaintiff to the admission in evidence of the 18th paragraph of said stipulation and the facts therein set forth, and to the admission of Exhibit A therein referred to, and in refusing to admit and excluding said 18th paragraph and the facts stated therein and the said Exhibit A, all of which were offered in evidence by said defendant and intervenors.

Said paragraph 18 is in words and figures as follows, to wit:

"That said board caused to be filed for record in the office of the recorder of said Tulare county, on September 14, 1889, the certified copy of the order hereunto annexed marked 'Exhibit A' hereinbefore referred to, and no other order of said board relating to the organization of said district was ever filed in the office of the county recorder of said Tulare county. That an election was called and held as recited in said 'Exhibit A,' of which due notice was given, and in such notice the lands of such proposed district were the same as those recited in said 'Exhibit A' as constituting such proposed district."

Said Exhibit A is a copy of an order of the board of supervisors, entered on its minutes of September 2nd, 1889, declaring said district organized and designating the persons elected as officers thereof.

XI.

Error in sustaining the objection of plaintiff to the admission in evidence of the 19th paragraph of said stipulation and the facts therein set forth, and in refusing to admit and excluding said 19th paragraph and the facts stated therein, all of which were offered in evidence by said defendant and intervenors. Said 19th paragraph is in words and figures as follows, to wit:

"No other orders or proceedings relating to the organization of

said district, were ever made or had by said board of supervisors, than as herein stipulated, and as recited in said exhibits."

459 XII.

Error in sustaining the objection of plaintiff to the admission in evidence of the 20th paragraph of said stipulation and the facts therein set forth, and in refusing to admit and excluding said 20th paragraph and the facts stated therein, all of which were offered by said defendant and intervenors. Said paragraph 19 is in words and figures as follows, to wit:

"That G. G. Kelly and B. W. Jauchius are the owners of the lands alleged in said complaint in intervention, as therein stated; that said G. G. Kelly is a citizen of the United States and a resident of the State of Massachusetts, and that said B. W. Jauchius is a citizen of the United States and a resident of the State of California."

XIII.

Error in sustaining the objection of plaintiff to the introduction in evidence of a certified copy of the judgment-roll in the matter of the Tulare Irrigation District. Said judgment-roll is composed of documents in substance as follows:

(1.) A petition by the Board of Directors of Tulare Irrigation District to the superior court of Tulare county, setting forth the various proceedings which had been taken with a view to the organization of the Tulare irrigation district and the issuance of bonds by said district, and praying that said proceedings be judicially examined, approved and confirmed by the court.

(2.) An order of the superior court of Tulare county reciting the filing of the above-mentioned petition and ordering said petition set down for hearing and the giving of notice of the filing of said petition by publication and posting.

(3.) An affidavit of one Miles Ellsworth, showing the publication in the Tulare Weekly Register of the notice of the hearing of said petition.

460 (4.) An affidavit of one Edward Oakford, secretary of the board of directors of Tulare irrigation district, showing the posting of the notices, of the hearing of said petition in the various precincts of said district.

(5.) The findings of fact and conclusions of law of said superior court in said confirmation proceedings, filed September 15, 1890. Said findings of facts set forth the taking of the various steps looking to the formation of the district, the election of officers and the issuance of bonds thereof, and the conclusions of law are to the effect that said district was regularly organized, and ever since its organization has been and still is a legal and valid irrigation district, and that all the proceedings for its organization are entitled to approval and confirmation; that the proceedings of the board of directors of said district providing for and authorizing the sale of the bonds of said district are legal and valid and entitled to approval and confirmation; and that the proceedings, orders and

resolutions of said board for the issue of the bonds of said district and the order prescribing the form of such bonds, and the order for the sale of such bonds, are legal and valid and entitled to approval and confirmation, and that said board of directors is entitled to a judgment confirming all the proceedings mentioned in said petition.

(6.) The judgment of said court in said confirmation proceeding, dated September 15, 1890, ordering, adjudging and decreeing the proceedings leading up to the organization of said district, and the proceedings leading up to the issue of the bonds of said district to be legal and valid, and that said district is a legal and valid irrigation district, having power to issue and sell the bonds of said district to the amount of $500,000, and that the bonds issued by said district are legal and valid and in proper form.

(7.) An answer of B. W. Jauchius, J. L. Gould, George C.
461 Kelly and Ralph Jones, to the said petition in said confirmation proceeding. Said answer contains denials of the various allegations in said petition and sets up the invalidity of the proceedings leading to the organization of the district and the invalidity of the proceedings leading up to the issuance of the bonds of said district, upon the various grounds specifically set forth in said answer, and prays that the approval and confirmation of the proceedings had by the directors of said district as alleged in the petition be denied by the court, that a decree may be had that said district was illegally organized and void, and that all the bonds issued by said district as set forth in the petition be declared void.

(8.) The opinion of the judge of the superior court stating the reasons relied upon by the court for setting aside the decree of confirmation hereinabove mentioned, and for entering a decree declaring the district illegal.

(9.) Findings of fact and conclusions of law, dated November 23, 1898. These findings set forth various defects in the proceedings leading to the organization of the district and in the proceedings leading to the issuance of the bonds, and as conclusions of law from the facts thus found, the court finds that the Tulare irrigation district is not legally organized, is not a valid irrigation district, and that the proceedings of the board of directors in providing for and authorizing the issue and sale of the bonds of said district to the amount of $500,000, are illegal and void, and that the order prescribing the forms of such bonds and the order for the sale of such bonds to the amount of $200,000, are illegal and void, and that the petitioners in the confirmation proceeding are not entitled to a judgment approving and confirming the proceedings mentioned in their petition, and that the defendants are entitled to a judg-
462 ment denying such confirmation and adjudging and decreeing that the proceedings had for the formation of such district, and all proceedings had since such formation, including the issue and sale of its bonds, are illegal and void.

(10.) The judgment in said confirmation proceeding dated November 23, 1898, adjudging that the Tulare irrigation district never was and is not a duly or legally organized irrigation district, that

all of the proceedings by which said district was organized are null and void; that all the proceedings taken by the directors of the district for the purpose of the issue and sale of the bonds of said district to the amount of $500,000, are null and void, and that approval of the aforementioned proceedings is denied; and further adjudging and decreeing that the said district never has been, since its attempted organization, and is not, a legally organized irrigation district, and had and has no power to issue or sell the bonds of said district, create indebtedness or perform any of the functions of an irrigation district.

XIV.

The court erred in denying the motion on the part of the defendant and intervenors to set aside and vacate the findings in favor of plaintiff, and to make and enter findings in favor of the defendant on the ground that there was no evidence whatever to justify the findings in favor of plaintiff.

JOHN GARBER,
C. L. RUSSELL,
G. W. ZARTMAN,
GEORGE H. MAXWELL,
R. M. F. SOTO,
Attorneys for Plaintiff in Error, Tulare Irrigation District.
C. L. RUSSELL,
G. W. ZARTMAN,
JOHN GARBER,
Attorneys for Plaintiffs in Error, Geo. G. Kelly and G. Garibaldi, Executor of the Will of B. W. Jauchius, Deceased.

463 (Endorsed:) No. 859. In the circuit court of the United States, ninth circuit, in and for the southern district of California. Alfred Spehard, plaintiff *vs.* Tulare Irrigation District, defendant. Assignment of errors. Filed Dec. 23 1901 Wm. M. Van Dyke, clerk Chas. N. Williams deputy.

464 In the Circuit Court of the United States, Ninth Circuit, in and for the Southern District of California.

ALFRED SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT, Defendant.

Order Allowing Writ of Error.

Tulare Irrigation District, defendant in the above-entitled action, and George G. Kelly, an intervenor in said action, and G. Garibaldi, executor of the last will of B. W. Jauchius, deceased, the other intervenor in said action, having filed in the circuit court of the United States, ninth circuit, in and for the southern district of California, their petition for a writ of error from the judgment entered

therein on the 30th day of March, 1901, pursuant to the decision of the court therein rendered, and having filed their assignment of errors; and it appearing that subsequently to the entry of said judgment said B. W. Jauchius died, leaving a last will and testament which was admitted to probate by the superior court of the county of Tulare, State of California, and letters testamentary issued thereon to said G. Garibaldi, by said superior court, and that said G. Garibaldi has filed herein a certified copy of said letters testamentary,

It is ordered that a writ of error be and is hereby allowed, to have reviewed in the Supreme Court of the United States the said judgment heretofore entered herein, and that said writ of error do issue in the form of law according to the statute in such case made
465 and provided, and that the amount of bond on said writ of error be and is hereby fixed at $1000.00.

Dated, December 23rd, 1901.

OLIN WELLBORN, *Judge.*

(Endorsed:) No. 859. In the circuit court of the United States, ninth circuit, in and for the southern district of California. Alfred Shepard, plaintiff, *vs.* Tulare Irrigation District, defendant. Order allowing writ of error. Filed Dec. 23 1901 Wm. M. Van Dyke, clerk. Chas. N. Williams deputy.

466 In the Circuit Court of the United States, Ninth Circuit, in and for the Southern District of California.

ALFRED SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT, Defendant. } No. 859.

Bond on Writ of Error.

Know all men by these presents, that we, Tulare Irrigation District, George G. Kelly and G. Garibaldi, executor of the last will of B. W. Jauchius, deceased, principals, and John Burgan, G. Q. Gill and S. Richardson as sureties, are held and firmly bound unto Alfred Shepard, plaintiff above named, in the sum of one thousand (1000) dollars, to be paid to the said Alfred Shepard, his executors and administrators, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our successors, representatives and assigns, firmly by these presents.

Sealed with our seals and dated the 19th day of December, 1901.

Whereas, the above-named defendant, Tulare Irrigation District, and the said George G. Kelly, and the said G. Garibaldi, executor of the last will of B. W. Jauchius, deceased, have sued out a writ of error to the Supreme Court of the United States to reverse the judgment in the above-entitled cause by the circuit court of the United States for the southern district of California.

Now, therefore, the condition of this obligation is such, that if the above-named Tulare Irrigation District, George G. Kelly and G.

Garibaldi, executor of the last will of B. W. Jauchius, de-
467 ceased, shall prosecute said writ to effect and answer all costs and damages, if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

TULARE IRRIGATION DISTRICT,
By its attorneys, G. W. ZARTMAN AND
C. L. RUSSELL.
GEORGE G. KELLY,
By his attorneys, G. W. ZARTMAN AND
C. L. RUSSELL.
G. GARIBALDI,
As Executor of the Will of B. W. Jauchius, Deceased.
JOHN BURGAN.
G. Q. GILL.
S. RICHARDSON.

STATE OF CALIFORNIA, } ss:
County of Tulare, }

John Burgan, G. Q. Gill and S. Richardson whose names are subscribed to the above undertaking, being severally duly sworn, each for himself says: That he is a resident and freeholder within said State of California, and is worth the sum in said bond specified as the penalty thereof, over and above all his just debts and liabilities, exclusive of property exempt from execution.

JOHN BURGAN.
G. Q. GILL.
S. RICHARDSON.

Subscribed and sworn to before me this 19th day of December, 1901.

G. W. ZARTMAN,
[SEAL.] *Notary Public in and for the County of Tulare, State of California.*

Endorsed: Form of bond and sufficiency of sureties approved. Olin Wellborn judge.

468 (Endorsed:) No. 859. In the circuit court of the United States, ninth circuit, in and for the southern district of California. Alfred Shepard, plaintiff, *vs.* Tulare Irrigation District, defendant. Bond on writ of error. Filed Dec. 23 1901 Wm. M. Van Dyke, clerk Chas. N. Williams, deputy —

469 In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

ALFRED SHEPARD, Plaintiff,
vs.
TULARE IRRIGATION DISTRICT, Defendant; GEORGE G. Kelly and B. W. Jauchius, Defendants and Intervenors. } No. 859.

I, Wm. M. Van Dyke, clerk of the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, do hereby certify the foregoing four hundred and sixty-eight (468) typewritten pages numbered from 1 to 468 inclusive, and comprised in one volume to be a full, true and correct copy of the record, pleadings, opinions of the court, papers, assignment of errors, and of all proceedings in the above and therein entitled cause, and that the same together constitute the return to the annexed writ of error.

470 I do further certify that the cost of the foregoing record is $303.05 the amount whereof has been paid me by the Tulare Irrigation District, George G. Kelly and G. Garibaldi, executor of the last will of B. W. Jauchius, deceased, the plaintiffs in error in said cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, this 26th day of December, in the year of our Lord one thousand nine hundred and one, and of the Independence of the United States the one hundred and twenty-sixth.

Seal U. S. Circuit Court, Southern Dist. Cal., 1886.

WM. M. VAN DYKE,
Clerk of the Circuit Court of the United States of America of the Ninth Judicial Circuit in and for the Southern District of California,
By CHAS. N. WILLIAMS,
Deputy Clerk.

471 In the Supreme Court of the United States.

TULARE IRRIGATION DISTRICT, GEORGE G. KELLY, and G. GARIBALDI, Executor of the Will of B. W. Jauchius, Deceased, Plaintiffs in Error,
vs.
ALFRED SHEPARD, Defendant in Error.

It is hereby stipulated and agreed, that in printing the record in the above-entitled cause there may be omitted from the printed record the hereinafter-specified portions of the record as the same appears in the transcript transmitted by the clerk of the circuit court to the clerk of the Supreme Court; and that said cause may be submitted, considered and determined upon the remaining portions of said record, that is to say, upon all of said record other than the

said portions which are omitted from the printed record, as aforesaid.

The said portions of said record which are to be omitted from the printed record as aforesaid, are the following, to wit:

1. An exhibit marked "A," annexed to the complaint in intervention of the intervenors George G. Kelly and B. W. Jauchius.

2. An exhibit marked "H," contained and set forth in the bill of exceptions, said Exhibit "H" being a pamphlet which was offered in evidence by the defendant and intervenors.

Dated, ——.

CALVIN L. RUSSELL,
G. W. ZARTMAN,
JOHN GARBER,
GEORGE H. MAXWELL,
R. M. F. SOTO,
Attorneys for Plaintiff in Error, Tulare Irrigation District.

CALVIN L. RUSSELL,
G. W. ZARTMAN,
JOHN GARBER,
Attorneys for Plaintiffs in Error, George G. Kelly and G. Garibaldi, Executor of the Will of B. W. Jauchius, Deceased.

S. F. LEIB,
Attorney for Defendant in Error, Alfred Shepard.

472 [Endorsed:] In the Supreme Court of the United States. Tulare Irrigation District, *et al.*, plaintiffs in error, *vs.* Alfred Shepard, defendant in error. Stipulation as to printing of record.

473 [Endorsed:] File No. 18361. Supreme Court U.S. October term, 1901. Term No. 508. Tulare Irrigation District *et al.*, P. E. *vs.* Alfred Shepard. Stipulation to omit parts of record in printing. Filed Jan'y 9, 1902.

Endorsed on cover: File No. 18,361. S. California C. C. U. S. Term No. 508. Tulare Irrigation District, George G. Kelly, and G. Garibaldi, as executor of the last will of B. W. Jauchius, deceased, plaintiff in error, *vs.* Alfred Shepard. Filed January 4th, 1902.